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ABSTRACT

This report focuses on the legal framework governing the operations of child care centers and family day care homes in the state of Hawaii. The scope, adequacy, and effectiveness of these regulations in protecting the health, safety, and welfare of young children are reviewed. A secondary focus is the management of the child care regulatory program by the Department of Social Services and Housing. Chapter 1 states the objectives and scope of the study and outlines the organization of the report. Chapter 2 provides background information on child care and its regulation nationally and in Hawaii, and chapter 3 discusses some principles relating to government regulation and the adequacy of child care regulations. The management of the child care regulatory program by the Department of Social Services and Housing is examined in chapter 4. Chapters 5 and 6 assess, respectively, the effectiveness of Chapter 892 (the laws for licensing child care centers and group day care homes) and Chapter 891 (laws issued for the licensing of family day care homes). A summary of the report is provided in chapter 7. (DST)

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REPORT NO. 85-12
FEBRUARY 1985

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STUDY OF THE REGULATION OF CHILD CARE IN HAWAII

A REPORT TO THE LEGISLATURE OF THE STATE OF HAWAII

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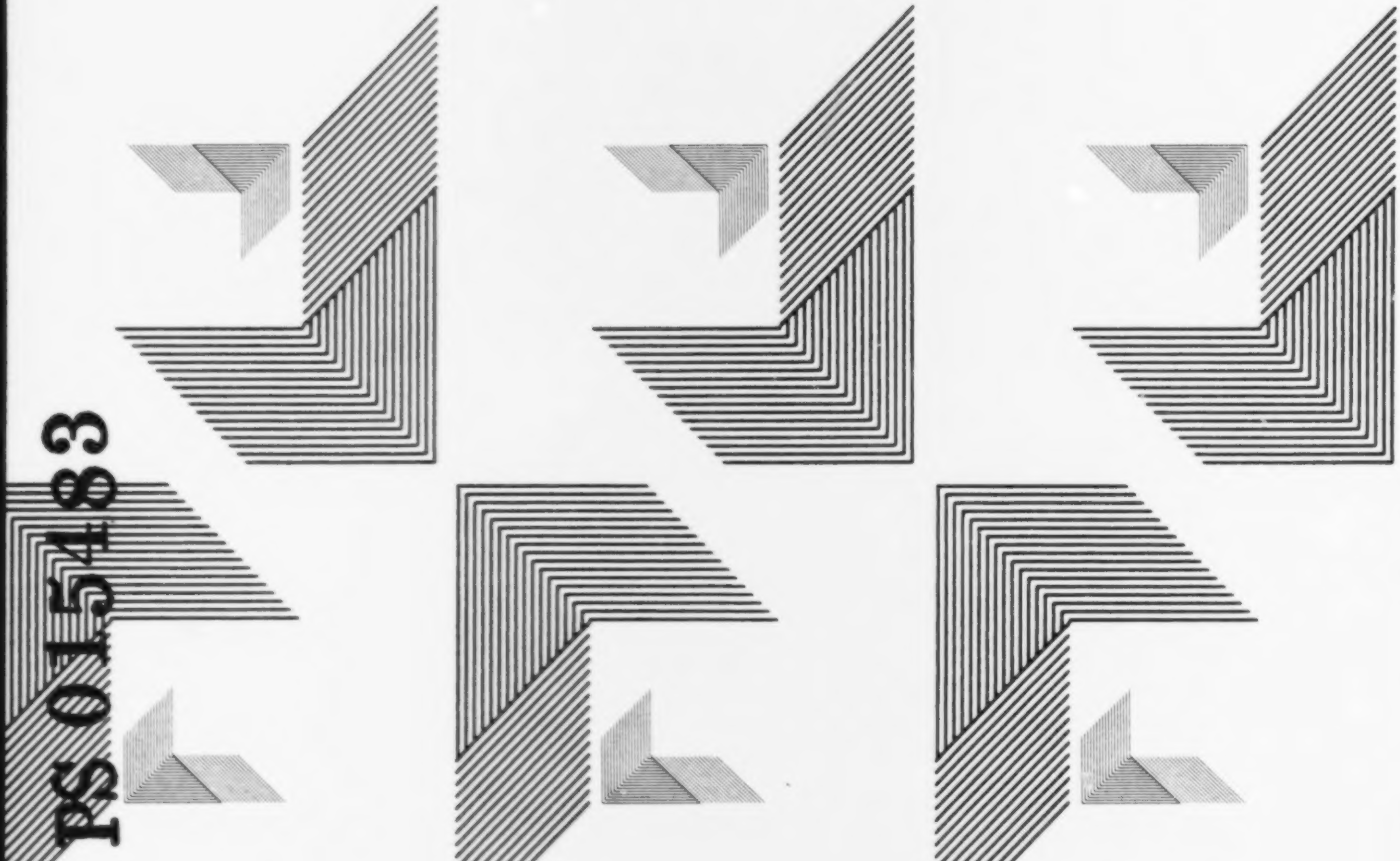

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SUBMITTED BY THE LEGISLATIVE AUDITOR OF THE STATE OF HAWAII

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STUDY OF THE REGULATION
OF CHILD CARE
IN HAWAII

A Report to the Legislature of the State of Hawaii

Submitted by the
Legislative Auditor of the State of Hawaii

Report No. 85–12
February 1985

FOREWORD

In 1984, the Legislature requested the Legislative Auditor to conduct a study of the State's child care regulatory program with the objective of developing policies to improve regulation. This report is in response to that request.

In accordance with the Legislature's request, the report focuses on the legal framework governing the program, the scope and emphasis of regulations for child care, and provisions to protect children from harm. Emphasis was placed on assessing the adequacy of rules issued by the Department of Social Services and Housing for the licensing of family day care homes, group day care homes, and child care centers.

We wish to express our appreciation for the cooperation and assistance extended to us by the staff of the Department of Social Services and Housing.

Clinton T. Tanimura
Legislative Auditor
State of Hawaii

February 1985

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Chapter 1

INTRODUCTION

State regulation of child care came under considerable attention during the 1984 legislative session. Three children were abducted from a licensed child care center and were reported to have been raped. Following this incident, there was controversy over whether records of licensing inspections of child care facilities and complaints made to the Department of Social Services and Housing should be made public.

The Legislature enacted Act 280 to clarify and to update statutory provisions relating to the regulation of child care and to provide for public access to records on child care facilities. At the same time, the Legislature decided that a review should be made of the child care regulatory program. The conference committee report on Act 280 said: ". . . at a time when the public has a heightened awareness and concern over the welfare and safety of children in all settings, it is time to review the child care regulatory program from a broad perspective with the objective of developing policies to improve regulation. Therefore, your Committee requests the Legislative Auditor to assist the Legislature by conducting a study of the legal framework governing the program, the current scope and emphasis of regulation, procedures to assure that those who care for young children do not have criminal records indicating potential danger to children, and other aspects to improve the program."

This study has been prepared in response to that request.

Objectives of the Study

The objectives of the study are:

1. To assess whether the current scope, content, and emphasis of child care regulations are effective in protecting the health, safety, and welfare of young children.

2. To evaluate the effectiveness of the child care regulatory program.

Scope of the Study

The study focuses on the statutes and rules governing the operations of child care centers and family day care homes. We reviewed the scope and the adequacy of these regulations and their effectiveness in protecting the health, safety, and welfare of young children. Although it was not our primary focus, the management of the child care regulatory program by the Department of Social Services and Housing was examined insofar as it was related to the development and implementation of the regulatory program and its effectiveness.

Organization of the Report

This report consists of seven chapters as follows:

Chapter 1 is this introduction.

Chapter 2 provides background information on child care and its regulation nationally and in Hawaii.

Chapter 3 discusses some principles relating to government regulation and the adequacy of child care regulations in this respect.

Chapter 4 examines the management of the child care regulatory program by the Department of Social Services and Housing.

Chapter 5 assesses the effectiveness of Chapter 892, the rules issued by the Department of Social Services and Housing for the licensing of child care centers and group day care homes.

Chapter 6 evaluates the effectiveness of Chapter 891, the rules issued by the department for the licensing of family day care homes.

Chapter 7 is a summary of this report.

Chapter 2

BACKGROUND

This chapter provides a brief description of the development of child care in the United States and its regulation by federal and state governments. It reviews some current trends in the field and describes Hawaii's child care regulation program.

Defining Child Care

The terms "child care" or "day care" generally refer to supplementary care of a child for part of a day by someone other than the child's parents. Child care services are generally provided to preschool children under the age of five and older school age children who need before and after school care.

The simplest and most familiar form of child care involves the babysitting of a child, either in the child's own home or the sitter's home, by a friend, relative, neighbor, or some other person.

A second common type of arrangement, known as family day care, involves an individual caring for several children in a home. These caregivers or providers are often young mothers with children of their own. Family day care homes may or may not be regulated by government agencies.

A third form of child care is provided by profit or nonprofit child care centers serving many children in a designated facility. These preschools or day nurseries or day care centers often employ more than one staff person and use professionally trained teachers. Almost all states regulate child care centers to some degree.

Development of Child Care

The history of child care in the United States reflects the socioeconomic conditions and public attitudes of the times. Governmental involvement in child care has been related to attempts to achieve multiple social and economic objectives.

Traditionally, there was almost complete reliance on a child's biological parents for child rearing. However, formal day care was introduced in the United States as early as 1828 when the Boston Infant School was established to serve employed parents and their children by providing a "learning environment." Another day nursery was opened in Boston in 1838 to care for the children of seamen's wives and widows. Similar nurseries were opened in New York in 1854.[1]

The federal government became a sponsor of day care during the Civil War when a day nursery was established in Philadelphia in 1863 to care for the children of women who worked in wartime clothing factories and hospitals.[2] Child care was supported as a service to working parents even at that early date.

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[1] James D. Marver and Meredith A. Larson, "Public Policy Toward Child Care in America: A Historical Perspective," in Philip K. Robins and Samuel Weiner (eds.), *Child Care and Public Policy, Studies of the Economic Issues*, Lexington, Mass., Lexington Books, 1978, p. 29.

During the Civil War and immediately afterward, concern over foundlings and other homeless children led to the establishment of a Board of Charities in Massachusetts to inspect and report on certain types of child care facilities. Scandals over the mortality rates and the abuse of children in private facilities subsidized by the states led to the first licensing law in Pennsylvania in 1885, followed shortly by the enactment of similar legislation in several other states.[3]

Toward the end of the nineteenth century, child care began to be viewed as a vehicle for assimilating and socializing the children of the large number of immigrants who were arriving in the United States. Many nurseries were established by private charities that also assisted parents in finding employment.[4]

The first White House Conference on the Care of Dependent Children in 1909 was a significant landmark. Included in the conference recommendations were the following: an emphasis that children be cared for in their homes as much as possible, that states inspect the work of all agencies caring for dependent children, and that these agencies be incorporated with prior approval by a suitable state board.[5]

The conference was an important factor in establishing the U.S. Children's Bureau in 1912. The bureau encouraged the development of standards for various types of child care and the establishment of commissions and child welfare committees in the various states. Following the creation of the bureau, more and more states adopted licensing laws. By 1920, most states had some form of regulation of child care.[6]

The objectives and the nature of child care shifted as the number of nurseries grew in response to conditions of war and unemployment. World War I increased the demand and supply of child care services as large numbers of women entered the work force. During the depression of the 1930s, the federal government provided funds for nursery schools to employ teachers, nurses, social workers, nutritionists, janitors, cooks, and clerical workers. Federal funds were also available to educate the children of needy, poor, or underprivileged families. At one point, these programs supported 1,900 centers serving 75,000 children.[7] They were established to create public employment and to stimulate the economy. When the economy improved, federal funds were discontinued.

The demand for women in the labor force during World War II resulted in another major infusion of federal funds for day care. The Lanham Act provided grants to local communities for public works in war impacted areas. Child care centers qualified for these funds. By the time the war ended, $51 million had been spent for the construction and operation of child care facilities. These facilities enrolled 1.6 million children in over 3,000 centers.[8] After the war ended, federal funds were again withdrawn and the centers were terminated.

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[2] *Ibid.*

[3] Gwen G. Morgan, *Regulations of Early Childhood Programs*, Washington, D.C., The Day Care and Child Development Council of America, Inc., 1972, p. 9.

[4] Marver and Larson, "Public Policy Toward Child Care in America," p. 30.

[5] Norris E. Class, *Licensing of Child Care Facilities by State Welfare Departments*, Washington, D.C., U.S. Children's Bureau, 1968, p. 58.

[6] *Ibid.*, p. 59.

[7] Marver and Larson, "Public Policy Toward Child Care in America," p. 31.

[8] *Ibid.*, p. 32.

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During the 1960s and 1970s, changing social attitudes renewed government interest in and support of child care services to achieve several social welfare objectives: to free welfare mothers to attain economic self-sufficiency, to provide compensatory education to disadvantaged children of poverty families, to provide support to economically self-sufficient or middle-income families, and to stimulate universal early childhood education.

In 1963, the federal government initiated grants to states to help establish local day care programs for working mothers of all income levels. Legislation to provide economic and educational aid to low-income families included direct or indirect support for child care. Among these were the Economic Opportunity Act of 1964, the Housing and Urban Development Act of 1965, the Model Cities Act of 1966, and the 1967 Amendments to the Social Security Act.[9]

The Headstart program under the Economic Opportunity Act was possibly the most influential. It emphasized early education; a broad spectrum of medical, dental, and nutritional care; parental involvement and training in the education of their own children; and the socio-emotional development of children. It made a significant impact on child care services and expectations.

During the 1960s and 1970s, the federal government actively pursued a policy of promoting high standards in child care services. Since most states varied considerably in their licensing codes, a federal standard for purchase of care services appeared desirable. In 1968, the federal government adopted the Federal Interagency Day Care Requirements (FIDCR) which set "advisory" standards for staff-child ratios, parent participation, mental and physical health services, delivery mechanisms, and costs. These were applied to day care services receiving federal subsidies but were never strictly enforced.

The federal government actively encouraged reform of state licensing codes and the adoption of standards for day care services by the states. In 1973, the federal government issued a model child care licensing statute and suggested regulations for programs, staffing, health and sanitation, fire, and safety. This material was to assist states in revising and improving their laws and regulations on child care.[10]

The FIDCR was the center of controversy for many years. There was little agreement on the objectives of the requirements—whether they were intended to help provide low cost care for welfare mothers who sought employment or whether they were intended to promote high cost, developmental care for disadvantaged children. A key issue was the low staff-child ratio required by FIDCR and the cost of compliance. Finally in 1981, the FIDCR was abandoned and federal funds for purchase of child care in each state became based on licensing standards set by each state.[11]

Child Care in the 1980s

Some changes in direction occurred in the 1980s. There was a gradual withdrawal of federal involvement in child care. The emphasis was on deregulation and decentralization. Title XX of the Social Security Act, the major source of direct funding for child care, was cut 21 percent in 1981.[12] This resulted in increased leniency in licensing at the state level and corresponding cuts in state expenditures for child care.

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[9] *Ibid.*, pp. 33-34.

[10] U.S. Office of Child Development, *Guides for Day Care Licensing*, Washington, D.C., 1973.

[11] Diane Adams, "Family Day Care Regulations: State Policies in Transition," *Day Care Journal*, Summer 1982, p. 9.

Although all states had adopted licensing laws as a result of earlier federal prodding, there was little uniformity among states in their regulation of child care. State regulations varied considerably in their scope, content, specificity, and areas of emphasis. State policies were in a period of rapid transition.

A survey conducted in 1983 reported that 34 states had amended their licensing codes since 1980.[13] Although some were minor changes, the majority of states listed substantial additions or deletions to their licensing codes.

Respondents to the survey also reported reductions in licensing staff coupled with additional staff responsibilities. Twenty-eight states noted a marked increase in complaints relating to abuse, neglect, and inappropriate treatment of children.[14]

Changes varied from state to state with few consistent patterns. However, there is a trend toward deregulation. Louisiana has revoked licensing for both child care centers and family day care homes and licenses only those facilities from which the state purchases care.[15] Many states are replacing licensing of family day care homes with registration. Fourteen states are currently using registration, and another 12 states are considering registration for regulating family day care homes.[16] In most cases, registration allows for self-evaluation of fire, safety, and other environmental conditions.

There are significant differences among the states in how they define centers and family day care homes and the number of children that are permitted in each. For example, a facility may be defined as a center in one state when it has three children while another state defines a facility as a center only when it has 15 or more children. Some states regulate homes with as few as one child whereas other states regulate a home only when it has six or more children.

During this same period, a fundamental demographic and social change is occurring nationally. There is a dramatic increase in the number of mothers working outside the home. The number of single parents doubled during the past decade. Added to this is a baby boom. The need for child care is seen as reaching critical levels. A recent survey by the Children's Defense Fund gave the following statistics as of March 1984:[17]

- 52 percent of women with children under six years are now working;
- nearly 50 percent of the mothers with children under the age of three are now in the work force compared with about 30 percent in 1970;

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[12] Helen Blank, *Child Care: The States' Response. A Survey of State Child Care Policies 1983–1984*, Washington, D.C., Children's Defense Fund, 1984, p. 1.

[13] Earline D. Kendall and Lewis H. Walker, *Day Care Licensing: The Eroding Regulations*, Nashville, Tenn., George Peabody College for Teachers, July 1983, p. 8, (ED 231 533).

[14] *Ibid.*, p. 10.

[15] Adams, "Family Day Care Regulations," p. 11.

[16] *Ibid.*, p. 10.

[17] Blank, *Child Care: The States' Response*, p. 13.

- about 73 percent of all employed mothers of school age children and 67 percent of mothers of preschool children work full time; and

- more than 9 million children under six and almost 15 million children between the ages of six and 13 have working mothers.

Public attitudes towards working mothers and child care are also changing drastically. Working mothers are accepted and include women from all socioeconomic levels. Child care is no longer perceived as a necessary evil for lower income working parents but as beneficial in its own right. Some researchers have found that children who attend preschool have better social skills and are better prepared for elementary school.[18] Even parents who do not work send their children to preschool part-time for these perceived advantages.

These changes have resulted in growing public concern over the availability and affordability of child care. There is an expanding gap between the demand and the supply of child care. By 1990, there will be almost 3.4 million more children under the age of six with working mothers.[19]

Most parents now make informal arrangements for child care. Others who cannot afford care for their children often have no relatives or friends to turn to for babysitting. It is estimated that 5 million children under the age of 10 are "latchkey" children who have no one to care for them after school. Some 500,000 preschoolers under the age of six are said to be in the same predicament.[20]

In 1984, revelations about the alleged sexual abuse of preschoolers by their teachers at Manhattan Beach, California, focused national attention on child care. The owner of a preschool and school staff were accused of sexually molesting hundreds of children over a 10-year period.[21] In New York, three employees of a center were accused of sexual abuse. The case was subsequently widened to six centers with 39 cases under investigation.[22]

Congress responded to these rising concerns by holding congressional hearings on child care and child abuse. As a result, in 1984 Congress appropriated an additional $25 million to the Social Services Block Grant Program to be earmarked for training child care workers, state licensing officials, and parents with emphasis on helping them recognize the signs of child abuse. These funds will only be available to states that establish state laws and procedures for checking criminal records and employment histories of child care personnel.[23]

Child Care Concerns in Hawaii

Events on the national scene were reflected in Hawaii in 1984. There was increasing concern over the availability and affordability of child care as well as its quality. Because of the high percentage of working mothers in this State, the demand for child care is critical. Table 2.1 shows the number of child care facilities in Hawaii as of December 1983. On Oahu, there were 168 licensed family day care homes, and these had an authorized capacity of 802 children. There were 239 centers able to care for 14,284 children. Overall, for all islands, there were 579 licensed facilities able to care for a total of 19,828 children.

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[18] "What Price Day Care," *Newsweek*, September 10, 1984, p. 16.

[19] Blank, *Child Care: The States' Response*, p. 14.

[20] "What Price Day Care," *Newsweek*, p. 14.

[21] "Preschool Owner, Staff Held in Molestation Case," *Honolulu Advertiser*, March 24, 1984.

[22] "Sex Scandal Widens," *Honolulu Advertiser*, August 10, 1984.

[23] "Child Abuse Reports Prompt Congress to Add New Funds," *Congressional Quarterly*, October 20, 1984, p. 2748.

Table 2.1

Child Care Facilities and Their Capacity as of November 1984

	Number of Licensed Family Day Care Homes	*Authorized Capacity*	*Number of Licensed Child Care Centers**	*Authorized Capacity*	*Total Facilities*	*Total Authorized Capacity*
Oahu	168	802	239	14,284	407	15,086
Hawaii	23	98	49	2,149	72	2,247
Maui	10	45	41	1,479	51	1,524
Kauai	22	77	27	894	49	971
TOTAL	223	1,022	356	18,806	579	19,828

*Including one group day care home.

Source: State of Hawaii, Department of Social Services and Housing, Public Welfare Division, Program Development Social Services Office, January 1985.

Data from the 1980 census shows that there were 77,848 children under five years in 1980.[24] It is not known how many of these children need child care. Since birth rates have recently been on the rise, there are at least the same number—if not more—children under five today. However, there is room for only about one-fourth of these children in licensed facilities.

Numerous groups have coalesced around the issue of child care. The major professional association in the field is the Hawaii Association for the Education of Young Children, the local chapter of the National Association for the Education of Young Children. Other active groups include the Hawaii Child Care Coalition which consists of parents, child care providers, and professionals; the Hawaii Chapter of the National Committee for the Prevention of Child Abuse which is examining sex abuse in preschools; Child and Family Service; and People Attentive to Children (PATCH), a nonprofit organization which provides information and referral services to parents in need of child care. PATCH also helps providers to improve their skills and to obtain their state licenses.

Hawaii did not escape the national furor over sexual abuse of preschoolers. Three children were reported to have been abducted from a Windward Oahu center and to have been raped. This was followed shortly by the revocation of the licenses of another center and a family day care home for alleged sexual abuse of children in their care. These incidents provided the impetus for a re-examination of the State's licensing program for child care in 1984.

History of Regulation in Hawaii

In 1955, the Territorial Legislature enacted Act 62 which provided for the licensing and regulation of day care centers. Centers were defined as any person, association, agency, or organization that: (1) advertises as a place for the care of children, or (2) has in custody for compensation one or more children under the age of 16 for any part of a 24-hour day.

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[24] State of Hawaii, Department of Planning and Economic Development, *State of Hawaii Data Book, 1983*, December 1983, p. 35.

The care of children by neighbors, relatives, or friends with or without monetary compensation on an irregular basis was exempt from the Act.

The purpose of the Act was to provide minimum standards and such rules as were necessary to protect children who were placed in such centers. The law also intended the Department of Public Welfare to make recommendations to parents on what centers would be appropriate for their children.

The law prohibited anyone from operating, maintaining, or conducting a child care facility unless licensed to do so by the Department of Public Welfare, now the Department of Social Services and Housing (DSSH). The statute contained no criteria or standards for licensing. Instead, broad authority was delegated to the department to "make, prescribe, and publish such rules and regulations and minimum standards as shall be deemed necessary to protect the best interests of minor children and to carry out the purposes of this Act."

The first regulations on day care centers were issued by the department in 1957. The rules were relatively simple and short, covering five areas:

- administrative requirements for applying for the certificate of approval; provisions for denial, suspension, and revocation of the certificate; and for hearings;
- organization and administration of the facility, including records to be maintained, insurance, and personnel requirements;
- admissions information and policies;
- care of children including health and program requirements; and
- physical facility standards such as outdoor space, building requirements, equipment, and fire protection.

The rules were revised in 1966 when a distinction was made between group day care centers and family day care homes and separate rules were issued for each. Group day care centers were defined as facilities providing care for six or more children. Family day care homes were homes providing regular care for two to five children, not including the provider's own children. No more than two children under two years were permitted in a home. According to the revised rules, centers were no longer allowed to accept children under two years after January 1, 1969.

The new rules also established more stringent educational requirements for directors of centers. The qualifications for directors of centers were increased from two years of training or experience in child care to a bachelor's degree from an accredited college plus two years of experience in working with children or a combination of two years of college education and four years of experience in working with children.

Two new categories of teacher and assistant teacher were created. Teachers were required to have any one of four combinations of education and experience or training, such as a bachelor's degree with courses in early childhood education or two years of college work supplemented by professional training in preschool or early childhood education and supervised teaching experience. Assistant teachers had slightly less stringent qualification requirements.

The current rules were adopted in 1982 but were many years in development. DSSH began work on revising and updating its 1966 child care rules in 1975. It appointed a

State Advisory Committee on Day Care Services to assist in this task. The committee consisted of approximately 15 individuals representing providers, various public agencies, and representatives of the private sector. Additional experts were invited to sit on the committee as the need arose. The rules were completed by 1978 and went out for public hearing in 1979.

Subsequently, there was a two-year delay. This was attributed to Act 216, SLH 1979, which requires all rules to be prepared according to a uniform format prescribed by the Revisor of Statutes.

By 1981, the Legislature had become increasingly concerned about the lack of action on child care. The Legislature adopted a resolution urging DSSH to report on the status of the State Advisory Committee. The Legislature noted that the committee had met regularly between 1975 and 1978 for the purpose of updating and rewriting the day care standards but had not met since then. It said, "There is a critical need to reconvene the committee so that it may provide consumer and professional input on the various child care bills introduced for legislative consideration and on the comprehensive rules and regulations currently being developed by the DSSH."[25]

Public hearings were held on the reformatted rules in July 1981 and the current rules were formally adopted in January 1982. The rules are substantially the same as those that were proposed for adoption in 1978.

The current rules. Two sets of rules now govern child care. Chapter 891 regulates family day care homes. Family day care homes may provide care for two to five children under the age of six in a private home. No more than two children under two are permitted. Chapter 892 regulates day care centers and group day care homes. Day care centers may provide care to children two years and older in facilities designed for child care. Group day care homes provide care for up to 12 children two years and older in a modified home. The same rules apply to centers and to group homes.[26]

The current rules represent a significant departure from the 1966 rules. They are greatly expanded and cover areas that had previously not been regulated. They now consist of nine subchapters covering the following:

- licensing procedures;
- administrative requirements;
- program requirements;
- staffing requirements;
- health standards for children;
- health standards for staff;
- environmental health standards;
- physical facility standards; and
- program modifications for drop-in care, before and after school care, night care, and for demonstration projects.

Chapter 892 has substantially increased administrative requirements for child care centers. Each center is required to have written operational policies, written descriptions of the center's program goals, written policies on emergency care, written guidelines on personal health care for its staff, and a written disaster plan. Each center is also required to maintain more detailed and extensive records on children in its care, its staff, and the operations of the facility.

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[25] House Standing Committee Report No. 1015, Re: House Resolution No. 458, House Draft No. 1, April 13, 1981.

[26] Only one group day care home is licensed currently; therefore, our use of the term "center" refers to both kinds of facilities.

A new section on program requirements was added which focuses strongly on developmental goals. It requires centers to have activities which promote physical development, such as varied physical activities; programs to promote intellectual development, such as providing a variety of learning materials; programs to promote emotional development; programs to promote social development; and programs to encourage the development of each child's special interests and abilities.

Staff training, experience, and personal qualifications were also expanded and made more stringent. For example, in addition to a baccalaureate degree, teachers are required to have six months experience working in an early childhood program. Requirements for assistant teachers were similarly raised from a high school degree to two years of postsecondary education plus six months of experience in an early childhood program. However, there is a provision allowing the department to waive these requirements should no qualified applicants be available for these positions.

The new rules phase in lower ratios for the number of children per staff member. A minimum staff employment sequence was established which prescribes the number and the type of staff required for certain groupings of children. For example, as of September 1984, there must be one teacher for each unit of eight two-year olds. Two units of two-year olds or 16 children must have at least one teacher and one aide.

Health standards were also expanded to require centers to consult with private physicians or other community health resources in developing health policies. Centers must also have written policies for emergency care. There are new requirements for the admission of ill children and the admission of children with handicaps.

Rules relating to the daily nutritional needs of children were expanded significantly. Centers are required to have access to nutritional information provided by a qualified nutritionist, dietitian, or other health resource and to have their food service reviewed annually by a qualified nutrition consultant or appropriate community resource. Rules covering food preparation and food protection were also added.

Mental health concepts were included in the new rules. Centers are required to integrate mental health aspects of child development into the day care program.

A new section on health standards for staff was added which requires the center to have evidence that providers are free from health problems which might have a harmful effect on children. Centers are also required to have health policies developed specifically for the day care setting. There must be written guidelines covering appropriate areas of personal health care that have been developed through a community health agency.

Centers are also required to have written disaster plans approved by the fire inspector, the health consultant, or the Red Cross to cover emergencies such as fires, floods, or natural disasters. They must take precautions against accidental injuries and ensure that the indoor and outdoor premises are free of environmental hazards.

There are also rules governing program modifications for drop-in care, before and after school care, night care, and demonstration projects. For the most part, rules for these kinds of care situations are less stringent than those for day care centers. The provision for demonstration projects was included primarily to permit the licensing of centers that care for infants under two years of age and centers that cannot comply with the rules in other ways.

Rules covering family day care homes in Chapter 891 are similar to those for centers but somewhat less stringent and with fewer administrative requirements.

Recent amendments to the law. In 1984, some significant changes were made to the law, primarily because of the abduction of children from the Windward Oahu center. Legislative deliberations on the matter were also affected by protests from one of the daily newspapers that the news media had been denied access to child care facility records maintained by DSSH.

The department's explanation was that some child care records contain confidential information that it was prohibited by law from divulging. The news media contended that records, such as reports on licensing inspections of facilities, are public records and that the public needs to be informed of conditions that might affect the health, safety, and welfare of children.

The bill that was finally adopted made several changes. It clarified and expanded the kinds of facilities which are not subject to licensure. The law exempts persons caring for related children and neighbors and friends who care for children less than twice a week; programs that provide exclusively for specialized training or skill, such as sports; community associations that promote recreation, health, or social functions; and any other organizations that the Director of DSSH chooses to exclude.

The law now requires DSSH to maintain records of the results of licensing inspections and complaints made in the current year and previous two years and to make these available for public inspection. DSSH is permitted to delete confidential personal information before making the records available to the public. The department may also withhold information on a complaint which is being investigated but not for more than 10 days with the exception of investigations alleging criminal offenses where the release of information might jeopardize legal proceedings. Finally, Act 182, SLH 1984, made violations of the law a misdemeanor.

Chapter 3

CHILD CARE RULES

This chapter discusses some general principles relating to government regulation and evaluates child care rules according to legally established guidelines for regulatory programs as well as some practical administrative considerations.

Summary of Findings

We find that the child care rules adopted in 1982 need improvement. Some of the new rules are unclear or vague, and others are not valid or reasonably related to the protection of young children. Many are unenforceable and unnecessary. There are also serious omissions which pose a threat to the health and safety of young children.

Principles Relating to Government Regulation

The purpose of regulation is to exercise government control over those activities that have the potential to endanger the health and safety of the general public. Licensing is an exercise of the State's police power over potentially hazardous activities. The State prohibits individuals from engaging in these activities unless they comply with legally established standards. In the present instance, no one may operate a child care facility unless that individual complies with state law and rules governing the operation of these facilities and has a license to that effect.

The primary purpose of child care licensing is to protect young children by ensuring that they are safeguarded from risks through proper supervision in facilities which meet certain standards. The statute itself contains no standards. Instead, Section 346-20, Hawaii Revised Statutes, states: "The department of social services and housing, after consultation with the department of health, the department of education, and the fire chiefs of the respective counties, shall make, prescribe, and publish such rules in accordance with chapter 91 as are deemed necessary to protect the best interests of minor children and to carry out the purposes of sections 346-18 to 346-25."

Rulemaking is a mechanism for implementing legislation. A rule is defined as "a regulation, standard, statement of policy or general order of general application having the force of law issued to implement, interpret, or make specific the legislation enforced or administered by the agency."[1] There are certain legal principles which govern rules issued by any administrative agency. There are certain practical considerations or constraints that apply as well. These principles and constraints form the basis for our evaluation of the current rules.

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[1] "Public Administrative Law and Procedures," *73 Corpus Juris Secundum*, p. 576.

Some legal principles relating to rules. According to administrative law, "A rule or regulation of a public administrative agency should not give the agency an unbridled discretion to enforce it against some and to refuse to enforce it against others. It should be consistent, uniform in operation, and equal in effect, it must not be unfair or discriminatory. An administrative rule or regulation must be reasonable, and have a rational basis, that is, it should not be arbitrary, or an expression of whim, nor should it rest merely on caprice. . . . Furthermore, such a rule or regulation should be consistent with law, and it should not be inconsistent with, or contrary to, the provisions of a statute, particularly the statute it seeks to effectuate."[2]

Regulations relating to occupational licensing are bound by the due process and equal protection clauses of the Fourteenth Amendment of the U.S. Constitution. Agencies cannot use standards that are arbitrary, capricious, or discriminatory in granting or revoking licenses. The Supreme Court has ruled that: "A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment."[3]

Courts have reviewed occupational licensing regulations in terms of their specificity, rationality, and fairness. Specificity means that the standards or guidelines that are used in granting, denying, suspending, or revoking licenses must be intelligible. A standard cannot be so vague that it permits arbitrary and discriminatory application. They must be sufficiently clear so that applicants and licensees know what is expected of them and what they may and may not do.

Rationality means that the methods selected must have a substantial relationship to the objective sought. In this case, it means that any requirement imposed on child care facilities must be relevant to ensuring the health, safety, and welfare of children in that facility.

Fairness means that administrative decisions must follow reasonable procedures. In cases of denial or revocation of licenses, applicants or licensees must be given the opportunity to present their own cases and rebut the evidence against them.

Other considerations. In addition to the legal guidelines for rules, there are other practical considerations. Most importantly, they must be enforceable or operationally valid. Norris Class, an authority on child care licensing, defines operationally valid standards as those "that are not only reasonably directive to providers, consumers, and other interested parties from the community, but standards which would be deemed to be reasonably enforceable when challenged by widespread public opinion or contested in administrative hearings or in court orders."[4] This means that standards imposed by the rules must be observable and reasonably measurable. Licensing workers must be able to determine in a relatively objective manner whether an applicant does or does not comply with the standard so that a decision based on the standard will not be arbitrary or capricious.

Closely tied to this is the requirement that they be reasonable. There are rules that appear to be plainly warranted in theory but prove to be unreasonable when applied to specific child care situations. Child care facilities are diverse and their operations are not always predictable. Rules developed with general hazards or goals in mind often do not have the intended effect when applied to a specific situation.

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[2] *Ibid.*, pp. 596-599.

[3] *Schware v. Board of Bar Examiners,* 353 U.S. 238.

[4] Norris E. Class and Jean English, "Formulating Operationally Valid Licensing Standards: A Beginning Effort in Model Building," Paper from the author, no date, p. 2.

Regulation must do more good than harm. In the field of child care, the issues of cost and availability are particularly significant. Even though most child care providers are poorly paid, parents complain about the cost and the availability of child care. Precautions must be taken that any rules adopted do not increase costs unnecessarily or inhibit the availability of services. One of the major complaints against the Federal Interagency Day Care Requirements, discussed in Chapter 2, and the reason for its demise was that it was too costly for providers to comply with the low staff-child ratios.

In addition to being reasonable, the rules must be sufficiently flexible to accommodate a variety of philosophical approaches to child care and diversity in services offered. The rules should not inhibit innovative approaches to child care. There is general agreement that there is no one right way to provide child care. Individual children respond differently to differing child care environments. Each parent also perceives a child's need differently. These diverse needs and approaches should not be stifled.

Finally, the rules must be sufficiently comprehensive to cover the hazards to which children might reasonably be exposed. Although not all dangers are predictable and it would be unrealistic to expect regulations to result in a completely pure and risk free environment, the rules should provide a reasonable level of protection to children.

Evaluation of the Rules

Our review of Chapters 891 and 892, the rules relating to the licensing of family day care homes and child care centers promulgated by the Department of Social Services and Housing (DSSH), indicates that they can be improved in many ways. The following sections discuss some deficiencies in the rules.

Lack of specificity. Rules are supposed to be sufficiently specific so that licensees and applicants know what is expected of them and what they must do to comply. Numerous sections of the rules fail to meet this criteria. The following are some illustrations.

- The rules relating to program requirements for centers are particularly vague in this respect. They call for "varied" activities or a "variety" of materials or "sufficient" and "appropriate" equipment. Judgments on the adequacy of facilities based on these criteria are unavoidably subjective and intuitive. Providers are also handicapped as they have a difficult time determining how much is enough or sufficient or appropriate.

- The rules call for written policies covering such aspects as the personal health care of staff members. However, the rules provide no information on what is to be in the policy or what the purpose is for this requirement.

- The department will allow demonstration projects for specific purposes upon written approval from the department. Demonstration projects must comply with the rules except as specifically exempted or modified by the department in its written approval. However, an applicant would have a difficult time determining who might apply, what purposes might be approved, which rules may be waived, what other conditions it must meet, what kind of evaluation will be made of it, how it will be monitored, or any other details about a demonstration project.

- The rules incorporate the rules of other state and county agencies by reference. Material adopted by reference should clearly specify the titles and sections of codes which apply, but this was not done. Instead, the rules merely require applicants to "satisfy all relevant school bus and traffic laws of the State"[5] or to "comply with accepted practices of local sanitary codes."[6] This type of reference is of no assistance to applicants or licensees in informing them of the standards they must meet. DSSH's own licensing workers say they need information on relevant rules and codes referred to in the rules. They do not have copies of the applicable sections of health and sanitation rules, traffic rules, building codes, or other standards that the providers are supposed to meet. Without this information, the licensing workers do not know when providers are in violation of other state or county codes.

Lack of rationality or validity. There should be a sound rationale for each rule that is imposed. Ideally, all rules should be supported by solid research findings or significant social data. According to Norris Class, "The standards or requirements must be, as far as possible, scientifically validated. The licensing authority must be able to show the need for the requirement by research or technical findings, especially in the form of epidemiological analysis. A validated relationship should also exist between what the regulations require and the specific preventive goals."[7]

Many of the rules are not based on empirical research or validated cause and effect relationships. There appears to be an intuitive assumption that more stringent standards will result in better quality care. Consequently, the State is requiring providers to meet certain standards that may not have any impact on the safety or welfare of children or even on quality, but may simply be increasing the cost of child care and reducing its supply.

A recent review of research on the consequences of day care found that "In spite of numerous empirical studies, the reviewers tend to agree that we do not have adequate information about the effects of various forms of day care on young children."[8]

There are no simple cause and effect relationships between early childhood experiences and subsequent development. Recently, developmental psychologist

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[5] State of Hawaii, Title 17, Department of Social Services and Housing, Subtitle 6, Public Welfare Division, Chapter 892, Licensing of Group Day Care Centers and Group Day Care Homes, Section 17-892-12.

[6] Title 17, Chapter 892, Section 17-892-37.

[7] Norris E. Class, "Licensing for Child Care," *Children*, v. 15, no. 5, September-October 1968, p. 191.

[8] Charles W. Snow, "As The Twig is Bent: A Review of Research on the Consequences of Day Care with Implications for Caregiving," Paper presented at the Annual Meeting of the National Association for the Education of Young Children, Atlanta, Ga., November 1983, p. 3 (ED 238 594).

Jerome Bruner noted that the effects of most experiences is not fixed but depend on the child's interpretation which varies with the child's cognitive maturity, expectations, beliefs, and momentary feeling state. Tempermental variations among young children suggest that there will be few uniform consequences of any particular class of experience.[9]

The following are some examples of rules that lack a basis in empirical research.

- The rules seek to promote social development by requiring providers to behave in ways which help children develop attitudes of respect for all other persons as individuals and an appreciation of cultural and ethnic diversity. The assumption here is that there is a direct relationship between the teacher's behavior and the child's appreciation of cultural and ethnic diversity and that this in turn will have an impact on the child's social development. Social development is not defined, the behavior required is not defined, the meaning of appreciation is not defined, nor is cultural and ethnic diversity.

- Section 17-892-28 of the rules requires the "integration of mental health concepts" of child development into the child care program. To accomplish this, the parents or guardians must be interviewed; the center's staff must have an annual orientation to state mental health programs or other programs; and finally, upon the parents' or guardians' request, the center will refer them to sources of professional mental health consultation. The activities required bear a questionable relationship to integration of mental health concepts into child development, whatever that might mean.

Lack of operational validity. Some rules lack operational validity as they are unenforceable. They are simply not standards which can be applied to see who measures up to the standard and who falls below. Instead, they prescribe a code of conduct. Rules that require providers to respect each child's privacy or to interact with children in ways which promote mutual respect or to behave in ways which help children develop attitudes of respect for other persons as individuals are not licensing standards. Behavior that meets the standard of respecting the privacy of a child or behavior that promotes respect is not definable and cannot be used as criteria for licensing.

Each rule that is adopted must be enforceable. There must be a rationale for that rule that is understandable to *both the licensing worker and the provider.* If the *licensing workers* do not know the rationale for the rule, the rule will not be uniformly and consistently enforced. If *providers* do not understand the rule, there will be noncompliance or resistance to what is perceived as unnecessary government intrusion and red tape.

Need for more reasonable and flexible rules. Although the rules cover a wide range of activities, many of these have little to do with protecting the welfare of young children. When providers ask licensing workers for the rationale for certain rules, the workers can provide no adequate explanation, thereby undermining confidence in the regulatory program.

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[9] Jerome Kagan, *The Nature of the Child*, New York, Basic Books, Inc., 1984.

Providers interviewed see many of the rules as unreasonable. They have questioned the meaning of the rule requiring written policies on the personal health habits of their staff or the rule that requires a facility's food service to be reviewed annually by a qualified nutrition consultant engaged by the center or by an appropriate community resource. Providers see these as imposing unnecessary additional costs to their program.

The requirement for food service review by a qualified nutrition consultant or an appropriate community resource is seen as particularly onerous. The Department of Health does not provide this service to facilities. Centers must contract for this service on their own. However, they do not know who qualifies as the rules have no definition of a qualified nutrition consultant. It was reported to the State Advisory Committee on Day Care Services in 1983 that there was one person on Kauai who was being trained to do this and that person planned to charge $18 per hour plus travel time. Today, there is no one to do this on Kauai.

The rules have also inhibited the availability of child care. One neighbor island licensing worker reported that some family day care home providers find the rules to be overwhelming, and many prospective homes do not apply for licensure.

Need for comprehensiveness. Comprehensiveness does not mean that the rules must cover everything. To be comprehensive, the rules must cover those situations that are potentially hazardous to children. There are some serious omissions in the rules. The following are examples:

- There is no requirement that parents be notified in the event of injury or illness. In one instance, a parent complained that she found bruises on her child but had not been informed of the injury by the teachers. In cases of serious injury, facilities should be required to contact the parents or sources designated immediately.
- There is no requirement that facilities inform all their staff of the reporting requirements of state law on child abuse and to have procedures for responding to these requirements.
- There is no direct prohibition against shaking, hitting, pinching, or other physical abuse of children. There is a rule prohibiting physical punishment or methods intended to be frightening, humiliating, or damaging to the child's health or self-esteem, but this is not sufficiently specific. Furthermore, focusing on the intent of the action is irrelevant and misleading. The acts themselves should be prohibited.
- There is no prohibition against the use of profane, abusive, or threatening language.
- There is no requirement that facilities report incidents of infectious disease to the health authorities or to parents.
- There is no prohibition against the licensing or the employment of individuals who have been convicted of child abuse or neglect.
- There is no range of sanctions that is available to the department to ensure effective enforcement. Its main recourse is to revoke a license. However, not all

violations warrant that severe a remedy. The rules themselves vary in their significance. Provisions should be available to apply varying levels of the sanctions which are appropriate to the violation.

Child Abuse

In the aftermath of the incident at a Windward Oahu preschool and the alleged sexual abuse of children at a preschool at Manhattan Beach, California, there has been considerable interest in protecting children from sex abuse. One proposed means of accomplishing this is to screen personnel in child care facilities to determine whether they have criminal backgrounds that might pose a threat to children.

Nationally, Congress has moved to encourage states to step up training and screening of child care workers. As part of the appropriations bill for 1985, Congress appropriated an additional $25 million for the Social Services Block Grant. These funds are earmarked for training child care workers, state licensing workers, and parents to help them prevent and recognize signs of child abuse. Full funding from the $25 million is available only to states that have established procedures by September 1985 for checking on the employment history and criminal records of all current and prospective operators, staff, or employees of child care facilities.[10] It is estimated that Hawaii's share of the $25 million will be approximately $106,000. DSSH is currently waiting for further information on this program from the federal government.

Hawaii data on criminal history is maintained by the State Criminal Justice Information Center. The center routinely performs criminal records checks for agencies that require this information. For example, bus drivers employed by child care facilities must have a criminal records check. In performing these kinds of checks, the center normally supplies information only on convictions, although it does maintain other data relating to a person's criminal history such as arrest records.

The center contains only data on criminal history in Hawaii. It does not have national data which is available from the Federal Bureau of Investigation or the National Criminal Information Center. The county police departments have access to this data, but there are federal restrictions on the dissemination of this information.

It should be noted that state law prohibits the disqualification of a person from employment by the State or from practicing any occupation for which a license is required solely because of prior conviction of a crime. Chapter 831, HRS, prohibits the use of the following records in connection with any application for employment, licensing, or registration:

- records of arrests not followed by a valid conviction;
- convictions that have been annulled or expunged;
- convictions of a penal offense for which no jail sentence may be imposed; and
- conviction of a misdemeanor where 20 years have elapsed since the date of conviction and there has been no subsequent arrest or conviction.

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[10] Public Law 98-473.

At the same time, Chapter 831 allows the State to consider as possible justification for refusing, suspending, or revoking a license any conviction of a penal offense when such offense directly relates to the individual's possible performance in the occupation applied for or held.

Should DSSH decide to establish procedures for checking the employment history and criminal records of child care providers and their staff, it must first determine the kinds of information it intends to seek and how this information is to be used. For example, whether it intends to use all felony convictions as grounds for denial or only certain kinds of felony convictions, who will have access to this information, and who will make the decision on whether an individual should be hired.

How Chapter 831 applies to individuals seeking employment in licensed child care facilities is uncertain. If DSSH should decide to request information in addition to conviction data, statutory changes may have to be made to Chapter 831, the Uniform Act on Status of Convicted Persons.

Should the department plan to request national data on criminal history, Public Law 92-544 which provides for the exchange of national criminal information requires this to be specifically authorized by state statute and approved by the U.S. Attorney General.

Our interviews with DSSH staff, members of the State Advisory Committee on Day Care Services, and providers show that there is nearly unanimous agreement that a criminal records check is a good idea. However, it should be remembered that not all offenders have criminal histories. None of the staff at the Manhattan Beach preschool who were accused of sexually abusing the children had criminal records.

Studies show that most sexual offenders are unlikely to have criminal records. Many cases are not reported.[11] Even when individuals are arrested for child sex abuse, they may be prosecuted under a different charge. Moreover, prosecutions of child molesters are often unsuccessful because the victims are unable to corroborate the charge in court.

It should also be noted that the data bases at national and local levels are not up-to-date or complete. The Federal Bureau of Investigation and National Criminal Information Center draw their data from reports made by the states. Not all states make reports, and the quality of those that do vary. In Hawaii, there is currently a substantial backlog of data to be entered into the Criminal Justice Information Center.

Other measures should also be taken to protect the safety of young children. Education and training programs for child care staff, licensing workers, and parents are important. People who work with children should be familiar with symptoms in children that might indicate that they are being subjected to sexual abuse. These symptoms include fearfulness, nightmares, or other changes in behavior. Various agencies are now providing workshops and seminars to parents and others on this subject. Licensing workers and child care providers should be required to attend these seminars. There are also educational programs that are now being made available to young children on how they can protect themselves from sexual abuse.

DSSH licensing workers should also conduct a more systematic review and verification of the credentials of child care

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11. Sally Koblinsky and Nory Behana, "Child Sexual Abuse, the Educator's Role in Prevention, Detection, and Intervention," *Young Children*, September 1984.

staff in their inspections. In one case where a license was revoked because of alleged sexual abuse, subsequent investigation showed that credentials and qualifications had been falsified. Currently, the credentials and records of child care staff are not systematically reviewed during licensing inspections. Some licensing workers check this on a spot basis, others do not.

DSSH should also build on existing state law relating to child abuse. Chapter 350, HRS, requires employees of public or private schools, staff of licensed day care centers, or similar institutions, to report to the DSSH whenever they have reason to believe that a child has been abused or neglected. DSSH is authorized to adopt rules to define and clarify the specific forms of child abuse and neglect to be reported. Those who knowingly fail to report such cases to DSSH are guilty of a misdemeanor.

The child care rules contain no provisions relating to reporting requirements. DSSH should develop rules on procedures for handling reports of child abuse. Child care centers should be required to follow policies and procedures on the reporting requirements and orient their staff on what constitutes a reportable case and how it should be handled.

Recommendation

We recommend that the Department of Social Services and Housing begin a systematic review of its rules to make the necessary revisions that will make them more specific, rational, and operationally valid. During this process, attention must be paid to ensuring that the rules are flexible and do not impose unnecessary costs or hardship. The department should also identify potential dangers for which no safeguards have been established in the rules and adopt rules which will provide for protection from these dangers.

Chapter 4

PROGRAM MANAGEMENT

This chapter evaluates the overall management of the child care regulatory program by the Department of Social Services and Housing (DSSH). We review the department's approach to the development of rules for the program and the efficiency and effectiveness of the department's implementation of the rules.

Summary of Findings

We find that the child care regulatory program has been poorly managed:

1. The department has failed to establish a systematic process for the review and revision of child care licensing regulations. As a result, the current rules have serious deficiencies that impair the ability of the State to protect child health, safety, and welfare. These deficiencies also unnecessarily prevent or impede the growth of child care services in the State.

2. The department has not managed the implementation of the child care licensing program. Licensing operations are inefficient and enforcement has been inconsistent and arbitrary. The department has also failed to monitor and evaluate the regulatory program so it is unaware of improvements that are needed.

3. The responsibilities of other state and county agencies involved in licensing child care facilities have not been adequately delineated so that there are gaps and inconsistencies in enforcement among these agencies.

4. Recent amendments providing for public access to licensing and complaint records have had little impact on child care.

Regulatory Responsibilities

The Public Welfare Division (PWD) of the Department of Social Services and Housing is responsible for all aspects of the child care regulatory program including the development of rules, implementation and enforcement of rules, and program monitoring and evaluation. Under the general direction of the Director of DSSH, PWD also provides social services, economic assistance, and medical care assistance payments to eligible families and individuals.

The division's Program Development Office provides staff support to the PWD administrator in program planning and budgeting, rules development, and program monitoring and evaluation. The program development staff is responsible for clarifying and interpreting rules to licensing workers when questions arise. This is often done informally on a verbal basis. Official interpretations are made through declaratory rulings issued through the PWD administrator.

Actual licensing operations are carried out by four branch offices that report to the PWD administrator: Oahu Branch, Hawaii Branch, Maui Branch, and Kauai Branch.

Within Oahu Branch, licensing of child care facilities is carried out by four full-time workers in the Adult Boarding and Day Care Licensing Unit. This unit also investigates and licenses adult family boarding homes. It is part of the Social Services Section II under the Oahu Branch office which includes units providing protective services to adults and children, adult day care services, adult boarding home and nursing home placements, veterans' services, and homemaker services.

On the neighbor islands, licensing is carried out by part-time workers in units or social services sections that are also responsible for adult boarding care, foster care, adoptions, and child abuse and neglect cases. As of September 1984, there was a 0.6 position for the Hawaii Branch, 0.5 for Maui, 0.5 for Kauai, and 0.1 for Molokai. The licensing worker in the Hawaii Branch is also responsible for foster homes and adoptions. The Maui worker is a half-time employee who spends all her time on licensing child care facilities. The Kauai worker is a full-time employee who is also responsible for adult boarding care and foster care.

PWD has appointed a State Advisory Committee on Day Care Services to assist it in developing policies and regulations for child care. The committee consists of between 15 to 20 members composed of parents and individuals from various public and private agencies. Members serve two-year terms and may serve for no more than two terms.

We find that PWD has not carried out its regulatory responsibilities effectively. A regulatory program consists of several components: (1) the development of the rules, (2) the implementation of the rules, and (3) the monitoring and evaluation of the rules. Each of these components has its own management requirements. Each contributes to the overall effectiveness of the program and, in turn, the program depends on how well each component part is administered. For example, the rules may be excellent but the overall program poor if the rules are not implemented properly. Also, the adequacy of rule development depends to some degree on the extent to which the implementation of rules has been monitored and deficiencies and omissions identified.

The department has not administered the component parts of the regulatory program so that they work together effectively. Substantial effort was invested in developing the current rules. However, the department did not plan for their implementation. And it has not monitored the impact of the rules or fully examined their adequacy and comprehensiveness.

The Development of Rules

The development of rules is a complex and demanding task that must be carefully planned and directed by the department. The rulemaking process involves several stages of research and deliberation. The department must be cognizant of the need to seek information and solicit input from various sources at each step along the way. It must also understand its own responsibilities in this process and the responsibilities of those that it calls on for assistance.

Table 4.1 summarizes the steps that should be taken in formulating sound licensing standards. The process consists of three major tasks: research, development, and adoption.

Table 4.1

Development of Rules

Steps	*Key Participants*
Research Phase	
Research the need for new standards or revision to existing standards.	Primary responsibility of the department administration which should seek input from licensing workers, child care providers, and parents.
Study other state licensing programs to benefit from collective experience.	Primary responsibility of the department administration.
Examine the contributions of national standard-setting organizations and identify any federal requirements.	Primary responsibility of the department administration.
Consult with other government agencies whose programs affect the licensing program.	Primary responsibility of the department administration.
Development Phase	
Conduct free and open discussions of specific problems and proposals for ways of meeting these problems via specific standards.	Primary responsibility of the department administration and its advisory committee which should seek wide input from licensing workers, child care professionals or experts, licensees, parents, other government agencies, and members of the community.
Final formulation of proposed rules.	Primary responsibility of the department administration working with its attorney and the state advisory committee.
Adoption	
Conduct public hearings and adopt rules in conformance with the Administrative Procedure Act.	Primary responsibility of the department administration.

Source: Adapted from Norris E. Class, *Licensing of Child Care Facilities by State Welfare Departments*, Washington, D.C., U.S. Children's Bureau, 1968.

The department has the primary responsibility for conducting preliminary research to identify the need for new standards or for revisions to existing standards. During this phase, program personnel should gather information from licensing workers, providers, and other government agencies to identify problem areas and collect information on ways to meet these problems. Program personnel must review empirical research conducted on the problem areas and study the regulatory programs of other states to benefit from their collective experience. The contributions of national organizations such as the Child Welfare League of America or the National Association for the Education of Young Children, which have done work on standards for child care, should be examined to determine their applicability to local problems.

During the development phase, specific problems and means to resolve these problems should be aired. At this stage, the department should work with its advisory committee to solicit input from as wide an audience as possible and seek to foster open discussion of the issues at hand. The department should establish a mechanism to ensure a wide range of community input. If sufficient, open discussion is not held prior to the adoption of standards, the proposed standards will not be relevant to community concerns and their adoption may be jeopardized. Following full consideration of the issues, the department should work closely with the advisory committee and its attorney to formulate specific standards to be adopted.

Finally, the department has sole responsibility for adopting the proposed standards in conformance with the Administrative Procedure Act.

We find that the department has not managed the rule development process adequately. It has no defined process, and it lacks any recognition of its own responsibilities for rulemaking *vis-a-vis* that of the State Advisory Committee on Day Care Services. As a result, there has been little progress in revising and updating the current rules.

Deficiencies in the current rules. In 1975, the department began work on revising and updating child care regulations that had been adopted in 1966. It appointed the State Advisory Committee to assist in this effort. Substantial work on the rules, including drafts of the rules, was done by a university consultant. The current rules are the product of considerable work by the consultant, the State Advisory Committee, and PWD staff. Although work on the rules was substantially completed by 1978, they were not formally adopted until January 1982.

The current rules are an improvement over the 1966 rules. However, more work is needed to ensure adequate protection for all children.

Although they are officially only three years old, the current rules are outdated in many respects. They are largely based on model licensing codes that were recommended by the federal government almost 13 years ago. More seriously, the rules are not based on the research findings of two major national studies on day care that were published after 1978.

The U.S. Administration of Children, Youth and Families sponsored a four-year study of child care centers at selected sites across the nation to investigate certain critical characteristics of child care and their effect on preschool children. A five-volume report on the subject was issued in 1979.[1]

The U.S. Administration of Children, Youth and Families also sponsored a study on family day care to establish a basis for policies on family day care. It explored various dimensions of family day care populations, programs, experiences, and preferences. The study spanned a four-year period from 1976 to 1980. A seven-volume report on family day care was issued in 1981.[2]

These two reports have considerable relevance for determining the validity and significance of various rules on child care. For example, the studies explored caregiver characteristics and their impact on child care quality measures, the significance of educational requirements, staff-child ratios, and other criteria that are being implemented under the current rules. They show that many of these rules have no significant value for ensuring the quality of child care and should be revised in the light of new research findings.

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1. Abt Associates, *The National Day Care Study*, Cambridge, Mass., 1979.

2. U.S. Administration for Children, Youth and Families, *The National Day Care Home Study*, Washington, D.C., 1981.

The rules are also incomplete because the State Advisory Committee had to table the important issue of group care for infants in 1977 in order to complete work on the main body of regulations. Consequently, one major omission in the current rules relates to the question of infant-toddler care. Today, Hawaii is the only state in the nation to prohibit infant and toddler care in child care centers. Although the rules prohibit center-based infant-toddler care, DSSH has authorized some centers to care for children under two years on a demonstration project basis.

The rules also need attention because experience in implementing them over the past three years has revealed rules that are not accomplishing their intended purposes, rules that are virtually unenforceable as licensing criteria, and rules that are unnecessary for the protection of children.

Deficiencies in the rulemaking process. DSSH has not recognized the need to work on these problems in a systematic way. It has made no effort to identify problems or gaps in the current rules. It appears to view the rules as largely complete and tends to ignore difficult or controversial issues such as infant-toddler care.

The department has not conducted the basic research and analysis into the need for new rules or for revision of existing rules. It has not sought information from licensing workers on the adequacy of the rules and whether they are accomplishing their intended purposes. It has responded in only a minor way to the concerns expressed by parents and providers. PWD is currently considering several rule changes, but these do not touch on any major concerns such as infant-toddler care in centers or substantive health and safety issues.

The department has not examined recent empirical research on child care to identify rules that should be revised, nor has it examined other state regulatory programs to benefit from their experience. For example, it has not researched these programs to determine what standards have been set elsewhere for infant-toddler care.

Instead of doing this work, the department has used the State Advisory Committee inappropriately to carry out the tasks of problem identification, research, and analysis. This has led to confusion and a lack of progress on rules revision.

For example, in 1981, the State Advisory Committee identified infant-toddler care as a major concern. It formed a subcommittee to look into this issue. The subcommittee recommended standards for infant care. Instead of using these standards as a point of departure for research and analysis, followed by open discussion and deliberations on specific standards to be proposed, the department adopted these standards as "guidelines" and has used them to license programs that comply with the guidelines. The standards do not have the force of law, and they are seriously inadequate for protecting the health and safety of infants.

The department has not established a mechanism for free and open discussions of proposals for meeting problems. It has not used the State Advisory Committee as a means of soliciting a wide range of community input. Instead, it has asked selected members of the State Advisory Committee for advice on specific issues, and it has used the committee inappropriately for such tasks as lobbying for departmental interests, such as for additional staff positions.

The department's failure to establish a systematic approach to the development and revision of rules has resulted in ineffectual handling of problems. This is illustrated by its approach to demonstration projects. The rules provided for the licensing of innovative child care programs as demonstration projects to stimulate new forms of child care. The State Advisory Committee would be a particularly appropriate vehicle for generating discussion and interest in these innovative projects.

In 1981, the State Advisory Committee identified demonstration projects as a problem area because the rules had no criteria for determining what programs qualify as a demonstration project and what programs are not licensable because they cannot meet all the rules. A subcommittee was formed to look into this issue. The subcommittee recommended guidelines for departmental review and acceptance of applications. Although these guidelines are vague and ineffectual, DSSH proceeded to license various demonstration projects.

DSSH is now faced with a glaring omission—the lack of an evaluation mechanism for licensed demonstration projects. There are now five such projects that are nearing the end of their three-year demonstration cycle and the department has yet to decide whether it will continue to license them as demonstration projects or to recommend a general rule change.

Instead of relying on demonstration projects to demonstrate the need for rule changes, the department should approach the rule development process on a systematic basis. It must recognize and assume responsibility for directing the process and doing the necessary work to carry the process through.

Program Implementation

The department has not planned or managed the implementation of the regulatory program. The tools needed for an efficient and effective licensing program are not available. There is no overall departmental policy on enforcement. There are no guides or manuals to assist licensing workers in carrying out their responsibilities. Training for licensing workers has been minimal. As a result, licensing workers are uneasy about which rules to enforce, how they are to be enforced, and how much discretion they should exercise.

The effectiveness of the regulatory program is diminished by the lack of uniformity and consistency in the licensing program. According to one study:

> "An effective state day care licensing system should be capable of administering all day care standards in a uniform manner. Thus, standards should be applied uniformly across the state, consistently between different licensing staff, and consistently by the same person over time. The term 'standards' itself implies a set of criteria applied uniformly. If standards are not uniformly applied, even the most stringent and comprehensive standards may not ensure adequate safeguarding of children. Nonuniform application of standards may have the effect of denying 'equal protection' to day care operators if some are treated more severely than others by the idiosyncratic interpretations of their licensing representatives. In addition, uniformity of standards provides assurance to parents of day care children that licensed facilities

> throughout the state attain the same minimum levels of protection and care."[3]

The State is currently incapable of administering the licensing program in a uniform and consistent manner because of the lack of state policy and procedures on regulation, the absence of standardized forms and licensing worksheets, and the lack of staff training to ensure that licensing workers interpret and apply rules in a consistent manner.

Licensing operations have become burdensome and unnecessarily inefficient. Recently, licensing workers on Oahu reported as much as a six-month backlog on their licensing renewals. This means that facilities that were up for renewal more than six months ago have yet to be inspected and relicensed.

DSSH is currently requesting an increase of 5.5 positions in its budget for licensing child care facilities. While some increase is needed, particularly for the Oahu Branch, the workload can be greatly reduced and simplified by better management of the program.

Lack of departmental policy. There is no overall statement of departmental philosophy on regulatory operations. This has led some licensing workers to question their appropriate function. The licensing workers at DSSH are social workers. Some of them report that their role has changed recently from consultation to policing compliance with regulations.

In consultation, workers help child care providers to understand and comply with the rules. In policing or enforcing the regulations, licensing workers do not have a client-consultant relationship with child care providers but merely make sure that rules are met and violations are cited.

In the absence of departmental policy, workers at the branches take different approaches to their jobs. In one branch, workers have been informed that their job is to enforce the rules. In their inspection visits, they are supposed to question the providers on how they meet certain rules and not to advise them. For example, the rules require providers to respect each child's cultural, ethnic, and family background. The licensing worker is told to ask the provider how this is accomplished. This approach has led to extended interchanges, with the provider asking the licensing worker what is meant or what they are supposed to be doing. In another branch, a worker using the consultation approach simply informs the provider what is required and discusses with the provider how the center can comply.

The two approaches are not incompatible with one another. Studies have shown that "the licensing worker's constituted authority for enforcing standards did not interfere with providing consultation to the licensee."[4] Both are key ingredients of a licensing program. Only insofar as both are included can there be a comprehensive licensing program.

Supervision is appropriate at certain times and consultation at others. It is a mistake to require workers to use either one approach or the other exclusively. This is particularly true because portions of the rules cannot be applied as licensing criteria. They are primarily codes of professional conduct that must be explained to providers. To require licensing workers to interrogate providers on rules such as

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3. John W. Lounsbury, et al., "The Uniformity of Application of Day Care Licensing Standards," *Child Care Quarterly*, v. 5, no. 4, Winter 1976, p. 249.

4. Lela B. Costin, *Child Welfare, Policies and Procedures*, 2d ed., New York, McGraw Hill, 1979, p. 127.

how they respect each child's ethnic background or how they foster respect between children and adults is inefficient and unproductive. It fails to encourage compliance or to promote the department's relationship with providers.

Lack of manuals. There are no manuals to guide the work of licensing workers. Licensing workers have no standard operating procedures on such matters as how certain applications are to be processed, what constitutes compliance, how appeals should be handled, or how complaints should be investigated.

There is no standard procedure even for such basic practices as whether the worker should make announced or unannounced visits in relicensing a facility or the extent to which information supplied by a provider should be verified.

Today, more and more cases of revocation or suspension are being contested. Licensing workers find that they have to be prepared to testify before hearing officers or to be cross-examined by attorneys. DSSH should have manuals and procedures to assist and support licensing workers in understanding their authority and how it should be used. Without guidance and support, licensing workers become unsure and reluctant to exercise their proper authority.

More importantly, no procedures have been established for handling more serious and sensitive problems such as allegations of sexual abuse. Licensing workers have been given no instruction or training on how such cases are to be investigated. Some workers say that they call the deputy attorney general, others call the Sex Abuse Treatment Center, and sometimes, the worker will go ahead and interview the individuals and children involved. Other workers say that they would call PWD's Program Development Office for advice.

There should be standard procedures for investigating allegations of sexual abuse of children. These cases require special skills and a coordinated effort among agencies such as the Department of the Attorney General, sex abuse treatment centers, and county police departments. Should such cases go to court, it is particularly important that the investigations have been properly carried out and all rules of evidence met.

Lack of standardized forms. The lack of standardized forms has contributed substantially to inefficiency in licensing operations and the lack of statewide uniformity.

Each branch uses its own forms even for applications. The rules require child care centers to submit numerous items of information, but DSSH has no standardized form for this. The Oahu Branch uses forms based on the new rules. Maui Branch uses another form that requests different information. For example, the Oahu Branch application form asks whether the center participates in the U.S. Department of Agriculture's child care food program and what mode of transportation is used on excursions. These questions are not on the form used by the Maui Branch.

Child care centers are also supposed to keep records on each child attending that facility. This includes information on the parents or legal guardians, physician to be called, etc. Each facility is allowed to use its own registration form. This means that there is no common format for capturing the required information. The licensing worker has to make adjustments for each facility that is inspected to make sure that all the required information has been supplied.

The most serious omission is the lack of a standardized worksheet for licensing workers to use when they go out to license or relicense child care facilities. In inspecting centers, Oahu Branch workers use a 15-page inspection form which has over 130 items which must be checked or commented on. Workers within Oahu Branch fill out the form in different ways as they received no training on how the form is to be used. Some workers will note that certain items were "not observed," and others will mark "no" on certain items. It is not clear what these comments mean as a "no" or a "not observed" does not mean a center will not be licensed.

The Hawaii Branch uses an inspection report which is a checklist of approximately 80 items. Each item is checked "yes" or "no." The Maui Branch has a four-page licensing worksheet which lists the relevant portions of the rules. These are checked off by the licensing worker. Kauai Branch is now using the Oahu Branch's inspection form on an experimental basis.

Obviously, each worker is licensing from a different perspective and capturing and evaluating different kinds of information. Under these conditions, the key ingredient of an effective statewide licensing program, that of consistent and uniform application of standards, is lost.

There are also no standardized forms for notifying providers of the results of the licensing investigation. Some licensing workers report that they had to draft different letters of notification to each provider. Much time can be saved through the use of standardized form letters.

Recently, all branches were asked to use forms developed by the Oahu Branch on an experimental basis. Some of the other branches have also developed forms that should be considered. For example, the Maui Branch sends a notice to centers that are due for relicensing informing them when their license is up for renewal and listing the materials that will be reviewed for relicensure. This procedure makes inspection visits more efficient as the required data is prepared and available at the time the inspection is made.

A comparison should be made of forms used by all the branches and this should be the basis for developing simpler and more efficient materials.

Distinction between licensing criteria and codes of professional conduct. There are 41 pages of rules for licensing child care centers. Approximately one-fourth of the items on the inspection checklist used by the Oahu Branch licensing workers are rules on program requirements aimed at promoting the physical, intellectual, emotional, and social development of the child.

A distinction should be made between most of these program requirements, which are primarily codes of professional conduct prescribing certain behavioral objectives, and the remainder of the rules which are licensing criteria. Licensing criteria are those measures that can be applied to determine whether the facility does or does not qualify for licensure, for example, certain numbers and kinds of personnel, a minimum square footage requirement, and health records on children. If the facility does not meet these minimum standards, they should not be licensed.

Codes of professional conduct are goals for child care staff in their interactions with children. These are attitudes and behaviors that are not readily measurable or observable. For example, the rules require providers to behave in ways that encourage each child's special abilities and interests, afford opportunities for self-direction, or interact with children in ways to foster mutual respect. These requirements are desirable, but they are not enforceable as licensing criteria.

Licensing workers at the Oahu Branch spend an inordinate amount of time attempting to determine whether child care centers are in compliance with these program requirements. The workers have been instructed to document on their inspection checklist behavior that might demonstrate compliance with these program requirements. This generally requires hours of observation at the center. For example, licensing workers might cite that they saw staff praising children as evidence of compliance with the requirement that staff interact with children in ways that foster mutual respect.

This approach to rule enforcement is time consuming and unproductive. It now takes a licensing worker at least one full day to relicense a center. There is little to be gained by attempting to document compliance with each program requirement. Sometimes, the licensing worker cannot find a behavioral indicator showing a provider to be in compliance with a program requirement. The requirement will be marked "not observed," or words to that effect, but this does not mean that the facility is not licensable, so the usefulness of this effort is questionable. In addition, these codes of professional conduct cannot be used in licensing new facilities as compliance cannot be observed prior to actual start-up of the facility.

Individuals in the child care field note the desirability of having these program requirements as guidelines to providers. If they are to be retained as rules, the most effective method of handling these requirements is to clarify them and treat them as codes of professional conduct. Child care centers should be provided with a list of the requirements and suggested behavior and activities that would meet with the requirements. The facilities should be asked to sign a statement certifying that they agree to abide by requirements for promoting physical, intellectual, emotional, and social growth of the children in their care.

Parents should also be given the same information so that they would know the standards of professional conduct to be expected of providers. Parents can then assist in monitoring the operations of the facility as some of the program requirements can be used as the basis for disciplinary action. For example, one rule says that there shall be no smoking in the presence of children. Obviously, providers will not do this when the licensing worker is there for the annual inspection. However, if parents know that this is against the code of conduct, they will be aware of and might report such violations.

Need for staff development programs. There is no systematic training program for licensing workers to ensure uniform and consistent application of licensing standards. There was a training session when the rules were adopted in 1982, but none since then. A conference in April 1984 touched on some of the rules and their application but training in licensing was not its principal focus.

Training is needed whenever new rules are adopted to familiarize licensing workers with the new rules and to explain to workers the rationale for each rule. Licensing workers must operate from a common frame of reference. Unless they understand the basis for each rule, they will not interpret the rule in a uniform manner.

Familiarization with new rules is only the first step. As licensing workers begin to apply the rules, there should be a sharing of information among licensing workers on problems encountered or interpretations made. There must be general agreement among the workers on what constitutes compliance with the various rules.

According to one author, "Staff development programs must be utilized to give licensing workers an understanding of the agency's consistent expectations in the applications of standards and, at the same time, a grasp of the limits within which they may use individual discretion in determining when an applicant has met standards acceptably."[5]

Studies elsewhere have shown that there is a high level of disagreement among licensing workers even on tangible standards that are subject to verification, such as staff-child ratios. In one study there was a 39 percent disagreement between paired licensing workers on whether a facility was in compliance in its staff-child ratio. The authors suggest that the lack of uniformity could be attributed either to differences in interpreting the standards or to differences in applying standards even when they are uniformly interpreted.[6] These findings demonstrate the need for more complete and systematic in-service and entry level training programs.

Systematic, ongoing training is also needed to accommodate turnover in staff. There are new licensing workers who have never been given any training. They are merely given a copy of the rules and then sent out to license child care facilities.

Need for monitoring and evaluation. There is a need for program monitoring and evaluation. If some attention had been paid to how the different branches are actually carrying out licensing operations, the need for a manual, standardized forms, and staff training and development would have been readily apparent. Actions to correct these deficiencies would have had a substantial impact in expediting and simplifying the work of licensing workers.

More importantly, it has been noted that monitoring is particularly essential after new rules have been adopted:

> "As soon as the licensing program is put into operation, experience begins to show where the standards are unworkable, insufficient, or outdated. Front line licensing staff—those persons who carry out licensing studies and offer supervision of licensed facilities—have a principal role to play in the reformulation of standards. These staff persons have important information to channel back to policy makers about the changing picture in licensing and current needs."[7]

They are the primary source of information on how the program is actually operating and unmet needs for protection.

Information on the impact of rules is essential for ongoing revision and development of rules because there is always the possibility that rules which were intended to protect against certain hazards have no impact in terms of protection but result in other unintended effects when enforced. For example, the rules for family day care providers require all children under 40 pounds to be harnessed into crash-tested car seats when they are transported in a vehicle. One impact of that rule is that some family day care providers no longer take children under 40 pounds on outings because they cannot afford to buy the required car seat for every child they have.

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[5] *Ibid.*, p. 121.

[6] Lounsbury et al., "The Uniformity of Application of Day Care Licensing Standards."

[7] Lela B. Costin, "The Regulation of Child-Care Facilities," in *Proceedings of the Centennial Conference on the Regulation of Child-Care Facilities*, Urbana, Ill., University of Illinois Jane Addams Graduate School of Social Work, 1968, p. 14.

Information from licensing workers on their difficulties in applying the rules can also pinpoint the areas in which further staff training and development are needed. The front line licensing workers are the critical interface between providers of day care and state regulation of these programs. They determine the effectiveness of the entire regulatory program. Greater attention must be paid to their needs, concerns, and suggestions.

Relationships With Other Agencies

To qualify for licensure, child care facilities must comply with rules and regulations of the Department of Health (DOH) covering food preparation and sanitation, rules of the Department of Transportation (DOT) covering transportation safety, and city and county building codes and fire codes.

For the most part, the various agencies work well together. Licensing workers report that the other agencies are responsive to their requests for the inspections. Generally, a facility is not licensed until inspection reports are received from all the agencies showing satisfactory compliance with relevant rules.

However, there is a need for clearer delineation of the respective responsibilities of the various agencies and how these responsibilities are to be carried out. DSSH should also establish more meaningful communication and input into rules developed by other agencies that are applicable to child care facilities.

The DOH sanitarian is responsible for inspecting facilities for compliance with DSSH's rules relating to environmental health. This includes rules on water supply, environmental hazards, food preparation and protection, and cleanliness. However, the inspection checklist used by most of DOH's sanitarians is still based on the 1966 rules. The checklist does not reflect the new rules which were adopted in 1982, and it includes items that have been rescinded. For example, the checklist includes the 1966 requirement that providers have U-shaped toilet seats. One provider complained of being cited by the sanitarian for not having this type of toilet and, after having these installed at some expense, of being informed by DSSH that this was not required.

The sanitarians' checklist also includes items that fall within the jurisdiction of DSSH and other agencies but not DOH. For example, it includes items relating to capacity and occupancy, outdoor space, and use of gates.

Here again, there is no standard form that is used on a statewide basis. The sanitarians on Oahu use the checklist based on 1966 rules. On Maui, an updated version of the checklist is used. On Kauai, the DOH sanitarians use a newly developed checklist based on the 1982 rules. Some agreement should be reached between DSSH and DOH on which rules each will enforce and a standard form should be developed for statewide use.

The rules contain only general references to the codes of other agencies. For example, providers are required to meet all relevant school bus and traffic laws of the State; all local sanitary codes; and all zoning, building, electrical, and plumbing codes of the counties. However, even the licensing workers do not know what these are. Thus, they are unable to provide information to providers who inquire about the various requirements. They are also unable to assess when there might be a violation of any of the codes.

Familiarity with the requirements of other agencies is important, particularly as some units do not perform inspections on an annual basis. The electrical and plumbing inspectors of the City and County of Honolulu only inspect newly constructed or renovated facilities. They do not inspect existing facilities except at the time of initial licensure. After licensure, minor changes are often made at these facilities which may be dangerous. For example, one center installed latches which were against the fire code. This was caught by a licensing worker only by chance.

As part of a staff development program, licensing workers should be kept up to date on applicable rules and codes of other agencies involved in child care licensing. They should be familiar with the exact responsibilities of these other agencies in enforcing compliance, how inspectors from these agencies carry out their tasks, and what they look for.

Another source of difficulty is that many of the rules that are now being applied to child care facilities were developed by other agencies for different purposes. These rules were developed without meaningful input from DSSH or the State Advisory Committee on Day Care Services. For example, the DOH requires child care centers that serve food to comply with its "Food Service and Food Establishment Sanitation Code." This code was developed for commercial restaurants and other food service establishments. Child care centers find compliance with many of the requirements to be costly, onerous, and unnecessary for protecting the health and safety of children. Many child care facilities no longer provide hot meals.

Similarly, the DOT has recently been assigned responsibility for pupil transportation safety. Child care centers say that DOT rules are going to be costly if not impossible for them to meet. For example, they are going to have to use yellow vans designated with the words "school bus" and with specified safety features. Some centers now use vans furnished by churches and other sponsoring organizations that would not be willing to repaint and equip their vans for this purpose. Providers have also complained that they have been notified by DOT that they are in violation of DOT rules without any forewarning of what the new requirements are.

As part of its rule development and revision process, DSSH should maintain close working relationships with other relevant agencies to keep informed and to have input into rules being developed by these agencies. DSSH should make sure that issues are brought to the attention of the State Advisory Committee to provide a forum for discussion. For example, in developing rules for pupil transportation, DOT worked with representatives from DSSH and some individual providers, but there was no general discussion of this by the State Advisory Committee.

Open Records

In 1984, Act 280 amended statutes relating to child care to provide for public access to inspection and complaint records. The amendments sought to balance the providers' right of privacy against the public's right to know. All inspection and complaint records are now required to be available for public inspection, but sensitive personal information is to be deleted before making the records public. Also, information on investigations relating to criminal offenses will not be released until the investigation has been completed and it is determined that legal proceedings will not be jeopardized.

Because media interest in open records was centered on Oahu, the Adult Boarding and Day Care Licensing Unit of the Oahu Branch concentrated on creating open files soon after the amendments were passed. All inspection records on day care facilities were reviewed, personal names were deleted, and new "sanitized" files were prepared for each licensed facility covering information for the past two years. Licensing workers were deployed to concentrate on completing this task instead of licensing. This was a major reason for the backlog in licensing that occurred this past year.

However, so far, there have been only a handful of requests to review the records. Most of the requests have come from the media. Because of the general lack of interest in open records at the other branches, licensing workers on Hawaii, Kauai, and Maui report that they did not sanitize their records. Instead, they decided to do this as the need arose. So far, the other branches report that they have had no requests to review inspection and complaint records of child care facilities.

Recommendations

We recommend that the Department of Social Services and Housing take steps to improve its management of the child care regulatory program as a whole by doing the following:

- *developing a systematic rule development and revision process and assuming responsibility for the leadership and work involved in carrying out this task;*
- *developing policies, manuals, procedures, and forms for implementing the regulatory program;*
- *distinguishing between licensing criteria and codes of professional conduct in its licensing inspections, clarifying and simplifying these codes, and making them available to providers and parents;*
- *providing for ongoing staff development and training of licensing workers;*
- *monitoring and evaluating the regulatory program to identify gaps and deficiencies in the rules or in implementing the program; and*
- *maintaining close working relationships with other departments involved in regulating child care facilities and working with these departments in developing rules and delineating responsibilities for regulation.*

Chapter 5

THE REGULATION OF CHILD CARE CENTERS

In this chapter, we examine the adequacy of regulations for the protection of children in child care centers. The focus is on the actual impact of the rules and the overall effectiveness of Chapter 892, the rules issued by the department for the licensing of child care centers.

Summary of Findings

We find that many of the rules have resulted in unnecessary paperwork and increased costs for centers without contributing to the protection of children. The effectiveness of the child care regulatory program is undermined by rules that are not enforced because they are incomprehensible or unnecessary, and rules that are enforced inconsistently because they are vague. In many respects, the rules are not accomplishing the protective objectives for which they were designed. A particularly egregious deficiency is the absence of rules for infant-toddler care in centers.

Evaluation of the Regulation of Child Care Centers

Child care centers operate under rules contained in Chapter 892, "Licensing of Group Day Care Centers and Group Day Care Homes." Group day care centers and group day care homes are defined as places maintained by any individual, organization, or agency for the purpose of providing child care. Group day care homes are allowed to provide care to no more than 12 children in a modified home setting. Currently, there is only one licensed group day care home.

Chapter 892 allows centers and group homes to care only for children over the age of two. There is no limit on the number of children that each center can enroll provided that it meets the staff-child ratio specified in the rules. In addition to routine center care, Chapter 892 also regulates before and after school programs, drop-in care, night care, and demonstration projects.[1]

The purpose of the rules is to protect the health, safety, and welfare of young children by establishing minimum standards for their care. The rules are effective to the extent that they accomplish this. However, the perception of child care needs and what is considered safe and adequate child care varies with the viewer.

In 1984, the Hawaii Child Care Project (HCCP) held a conference on child care. HCCP consists of parents, child care providers, and other professionals in the field. Major issues discussed were the quality, cost, and availability of child care. Although parents considered quality to be of primary concern, they were willing to trade this off for availability and less costly care. Conference participants noted that there clearly are not enough child care centers on Oahu to meet the varied child care needs. Alternate arrangements are needed for infants, children with special needs, and children of shift workers. Although child care providers are working for low wages, the cost of child care still placed a strain on many parents. The monthly cost for one child ran from $160 to $225. The monthly cost for after school care was from $60 to $85. For those with more than one child, costs for child care are substantial.

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[1] Our use of the term "center" in this chapter includes group day care homes and other child care programs covered under Chapter 892 of the rules.

The conference report noted that there is a major conflict in the child care field on Oahu, saying, "In the past, child care needs have been defined by well-meaning educators, providers, professionals and agencies. The proposed solutions very often did not and do not fit the *needs as they are perceived by the parents.* Because of their daily experience with the inadequate child care available, parents are the experts at knowing what is truly needed — what would really make their lives easier."[2]

A survey of parents prior to the conference disclosed that parents were concerned primarily about the following:

- parents have a difficult time locating child care for *all* of their children, particularly if they have children in different age groups, i.e., preschoolers, school age;
- the cost of child care was of enormous concern;
- most programs close at 5:30 p.m. with substantial penalties for late pick-up of children. Given the traffic, those who get off work at 5 p.m. find it difficult to pick up their children on time.

These parental concerns on availability and cost of child care must be considered in assessing the adequacy of child care regulations. In addition to ensuring a safe environment for children, the rules should not have the effect of restricting the growth and availability of facilities to provide for a variety of child care needs nor should they impose unnecessary costs for providers. Each rule must have a valid relationship to the protection of young children. Rules that are unreasonable or that impose unnecessary paperwork diminish cooperation and compliance.

Based on interviews and discussions with child care providers, licensing workers, and others in the field of child care, we found that there is general agreement that Chapter 892 is an improvement over the 1966 rules. When these rules were first adopted, there was substantial controversy over some of the requirements, particularly requirements relating to staff-child ratios and staff qualifications. However, most of the new provisions are now accepted by those in the field. They report that many of the new rules have resulted in improved child care.

However, there is room for substantial improvement in the rules. In the following sections, we review rules relating to administrative requirements, programs, staffing, health standards, facility standards, and program modifications for drop-in care, night care, and before and after school care. Problems with specific rules are identified and discussed.

It should be noted that there is one shortcoming which appears throughout the rules. This is the emphasis placed on written policies and the requirement for centers to develop policies on a variety of subjects, such as health, program goals, disasters, etc. Although specific policies will be discussed in the sections that follow, we wish to point out here that these policies serve little purpose. There are no guidelines for centers to follow in developing these policies, and there are no standards for assessing these policies. Each center is allowed to develop its own policies and those submitted are accepted as valid. The Public Welfare Division (PWD) is apparently requiring centers to prepare policies in lieu of PWD developing definite standards on various aspects of child care. If PWD has no minimum standards on these subjects, then nothing should be required.

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[2] Hawaii Child Care Project, *The Hawaii Child Care Project Conference Report*, Honolulu, 1984, p. 2.

Administrative requirements. Providers complain that the new rules have resulted in increased paperwork. Some of this additional paperwork serves no useful purpose. Staff time spent on this could be better spent elsewhere.

Section 892-6 of the rules requires each center to submit a statement of operation policies covering 15 different areas, including ages of children accepted, fees, hours of operation, whether meals are served, admission requirements, plan for emergency care, transportation arrangements, special needs of children, and fundraising campaigns. Written policies covering the 15 areas are to be made available to the department, parents, and guardians. While policies may be useful for some of these areas they are not needed for all 15 areas. For example, it is not clear what the policies on special needs or fundraising campaigns are supposed to say. Licensing workers ask for these policies but have no basis for deciding whether the policy is acceptable. Since there are no standards for assessing the adequacy of various policies, licensing workers do not evaluate the policy but only require that they be in writing.

The reason for the rule is unclear. If the objective is to ensure that parents have sufficient information about a center then the rule can be greatly simplified. Some of the items can be deleted. PWD should identify what items of information are essential and furnish a form to the centers to fill out and give to parents and the department.

All centers are also required to retain written records on various aspects of their operation. Some records are essential, others are not. For example, centers are required to keep a record of their daily menu. This is useful for assessing the adequacy of meals served by centers. However, even centers that serve only snacks must keep a record of the snacks served. The only reason for this requirement is to provide data for a nutrition review that is required by the rules, but neither a record of snacks nor a nutrition review of snacks is necessary.

Program requirements. A major subcategory in Chapter 892 deals with program requirements. This section prescribes activities for promoting the physical, intellectual, emotional, and social well-being of the child. Among other things, it requires the center to provide varied physical activities, opportunities for self-expression, development of respect for others, communication with parents, and a variety of program materials and equipment.

Most providers and others in the child care field see these program provisions as desirable. They say that they create awareness of the importance of a well-rounded program for the development of a child. As we noted in Chapter 4, certain program requirements should be retained as a code of professional conduct for providers.

However, there are some program requirements that serve no useful purpose and should be eliminated. There are other program requirements that can be used as the basis for suspending or revoking a license as they involve staff behavior that might be damaging to children. These should be strengthened and made more specific.

Among the program requirements that serve no purpose, Section 892-14 requires caregivers to exchange information with parents about each child, and Section 892-16 requires provisions to be made to assist a child in making the transition from the center to a new kindergarten, child care facility, or school, and for the caregiver to cooperate in this effort. These rules are unnecessary as providers routinely talk with parents and cooperate with them. Licensing workers see little point in asking directors for the obvious, such as: Do you exchange information regularly with parents or do you cooperate with parents?

One rule requires centers to provide the department with a brief written description of their program goals and how the daily activities of the center satisfy the physical, intellectual, emotional, and social development and well-being of the child. This is a time-consuming exercise that accomplishes little. Licensing workers have no basis for determining whether the statement submitted by a center is satisfactory. The requirement should be eliminated.

Some rules need to be made more specific. Section 892-13(4)(E) of the rules says that providers shall not use physical punishment or methods of influencing behavior which are intended to be frightening, humiliating, or damaging to the child's health or self-esteem. There is a center that has a policy of spanking unruly children based on its interpretation of the Bible. The school has long been licensed, and spanking was a policy that was known and accepted by parents. The center does not consider spanking to be frightening, humiliating, or damaging to the child.

In 1984, the rule was re-interpreted by the Department of Social Services and Housing (DSSH) as prohibiting physical punishment. The center's license was suspended until it agreed that it would no longer allow physical punishment. It now has a temporary license while it appeals its case to circuit court. If the intent is to prohibit physical punishment, then the rule should simply say *no physical punishment.* This would have been clearer and would have resulted in more consistent enforcement.

The above rule and a rule requiring each child's personal privacy to be respected are used as the basis for revoking licenses in cases of alleged sexual abuse. More specific rules are needed to prohibit any form of child abuse or sexual abuse.

More specific rules are also needed on program equipment and materials to protect children from injury. The rules require grass, soft media, or other protective materials to be used under swings, slides, jungle gyms, and other similar equipment. Licensing workers report that they have asked for a definition of soft media and for clarification of what would be acceptable. There has been no official clarification, but workers report that they have been told verbally that packed dirt is acceptable.

Playgrounds provide opportunities for growth and development. However, they can be dangerous. A study of claims data from a child care accident insurer for 1981-1982 showed that two-thirds of all the injuries occurred on the playground.[3] The U.S. Consumer Product Safety Commission also became concerned about the safety of playgrounds after an analysis showed a large number of children being treated in hospital emergency rooms for injuries associated with home and public playground equipment. Over half of the injuries were caused by falls. The type of surface on the playground is a major factor affecting the severity of injuries resulting from a fall.[4]

Resilient surfacing materials are recommended, particularly under climbers and other playground equipment. This should consist of shredded bark or wood chips or inorganic materials such as shredded tires or rubber matting. These must be maintained to make sure that they do not become compacted.[5] Packed dirt is not resilient and should not be accepted as soft media.

Several of the rules for program equipment and materials are also unnecessarily vague. For example, centers are supposed to have a variety of materials that are sufficient in number to avoid excessive competition among children and long waits. Judgments as to what is excessive competition, long waits, or sufficient variety are entirely subjective.

Staffing. Chapter 892 phased in lower staff-child ratios over a three-year period and increased education and experience requirements for center staff. These changes have resulted in higher costs for child care. Directors estimate that their personnel costs for child care have increased 15 percent or more. In upgrading the rules for staffing, it is not clear that adequate consideration was given to increased personnel costs resulting from higher staffing standards.

Staff-child ratios. As of September 1984, there must be the following staffing ratios:

Two-year olds: 1 staff to 8 children

Three-year olds: 1 staff to 12 children

Four-year olds: 1 staff to 16 children

Five-year olds: 1 staff to 20 children

Some providers objected to the ratios when they were first proposed. However, most directors now accept these ratios although some still think that they are unnecessarily low.

In addition to the staff-child ratio, centers must comply with a "minimum staff employment sequence" that specifies the number and kinds of staff needed. For example, one unit of 12 three-year olds must have one teacher; two units will require a teacher plus an aide; three units, or 36 children, will require a teacher, an assistant teacher, and an aide. No maximum group size is specified in the rules.

Schools that deliberately mix the ages of children such as Montessori schools are allowed to average the staff-child ratios. If they have three-, four-, and five-year olds, they can use the four-year old staff-child ratio. Mixing of ages and averaging are also permitted during nap time and for night care.

While the staff-child ratio is easy to apply and enforce for age segregated classes, the minimum staff employment sequence and the staff-child ratios are almost impossible to apply and enforce for mixed groups. It is particularly confusing as licensing workers have been informed that they can consider the enrollment of the center as a whole in determining whether the staffing is appropriate. For example, center A has two classrooms with 21 three-year olds in one classroom and 27 four-year olds in the second classroom. Each room has a teacher and an aide for a total of two teachers and two aides for 48 children. Center B has one large classroom of 48 children consisting of mixed ages of three-, four-, and five-year olds. The rules allow center B to use the average staff-child ratio or the ratio for four-year olds for the group. Center B satisfies the staff employment sequence with one teacher, one assistant teacher, and one aide.

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[3] Susan S. Aronson, "Injuries in Child Care," *Young Children*, September 1983, pp. 19-20.

[4] Deborah M. Gordon, "Toward a Safer Playground," *Day Care and Early Education*, Fall 1981, pp. 46-53.

[5] *Ibid.*, p. 47.

To add to the difficulty of determining compliance with staffing ratios, the number of children attending each center varies through the day. Some children attend only in the mornings while others stay part of the afternoon or all day. The staff-child ratio is allowed to fluctuate accordingly. Schools which group children of mixed ages may use an average ratio but for not more than three hours of instructional time. Averages may also be used for nap times. However, averages may not be used for lunchtime.

These variations make it almost impossible for licensing workers to establish precise staffing requirements or to monitor compliance. To avoid confusion, they have allowed averaging for mealtimes as well as for naps although this is not allowed by the rules. Consequently, the staff-child ratios and the minimum staff employment sequence that look very simple and precise on paper are difficult to calculate and are being enforced inconsistently.

In the mid-1970s, the U.S. Office for Children, Youth and Families sponsored the National Day Care Study, a major four-year study of day care centers to provide a sound research base for the development of federal policies on the regulation of child care centers receiving federal subsidies. Among the variables studied was classroom composition in terms of total group size and staff-child ratios.

The study found that total group size was significantly related to the study's measures of quality. Smaller groups were consistently associated with better care, more socially active children, and higher gains on two developmental tests. Staff-child ratios showed some relationship to better quality care, but the results were not strong or consistent. Staff-child ratios had a substantial impact on cost of care. The study recommended that the same staff-child ratios be applied to three-, four-, and five-year olds as the study turned up no basis for differentiating staffing requirements among these age groups. In addition, differentiation complicated monitoring and enforcement. The study recommended that the group size for three- to five-year olds be twice the staff-child ratio but no more than a maximum of 18 children per group.[6]

Considering the complexity of the ratios in Chapter 892 and the difficulty of determining the minimum staff employment sequence, some consideration should be given to using a single ratio for children between three to five years and requiring a maximum group size.

Another issue is that rules on the staff-child ratio require a teacher to be on hand at all hours that the center operates except the first and last hours of the regular operating day when a director or an assistant teacher may be counted as fulfilling the ratio. Some directors see this as completely arbitrary. They say that this increases their costs unnecessarily and that it is difficult to find teachers who are willing to come to work at 7 a.m. and leave at 6 p.m. They also say that it is not necessary to have teachers on hand during all hours that the center is in operation as the instructional program takes place largely in the morning. Some directors would like greater flexibility in assigning assistant teachers or aides to cover the noninstructional hours, such as early morning and afternoons. This would help to reduce costs and perhaps make it economically feasible to extend the hours of operation for the convenience of parents who have a difficult time getting to centers on time after work.

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[6] Abt Associates, *Children At The Center: Final Report of the National Day Care Study*, Cambridge, Mass., March 1979, p. 141.

Staff qualifications. The rules on staff training, experience, and personal qualifications are unnecessarily stringent. They are sometimes difficult to apply, and they restrict less expensive forms of child care, such as parent cooperatives.

The rules have high standards for directors of centers. They must have a bachelor's degree from an accredited college, preferably with courses in child development or a related field, and two years of experience working with children, *or* two years of college education or a child development associate certificate and four years of experience in working with young children. In either case, a person must have one year of experience with children of the appropriate age as those at the center.

The qualification requirements for teachers are even more strict. Teachers must have a combination of the following academic education, experience, or training: (1) a degree in child development or early childhood education plus six months experience in an early childhood program, or (2) a postsecondary credential in a child development associate program or a certificate in early childhood education (60 credits) plus one year of supervised teaching experience in an early childhood education program, or (3) a baccalaureate degree in elementary education plus six months experience working in an early childhood education program plus six college credits or equivalent in approved child development or early childhood training courses, or (4) a baccalaureate degree in any field, six months experience in an early childhood program, plus 12 college credits or equivalent in approved child development or early childhood training courses.

Assistant teachers qualify if they have one of the following: (1) a postsecondary credential in a child development associate program plus six months of work experience in an early childhood education program; or (2) an associate of arts degree and certificate in early childhood education and six months of experience; or (3) two years of postsecondary education, six months of experience, plus nine credits of approved early childhood education training courses.

These standards are considerably higher than those in other states. The majority of states do not require postsecondary credentials for directors or teachers.[7] The most common criteria used by states in their regulations are age (over 18 or 21) followed by graduation from high school. Several states have no staff qualification requirements. Hawaii is one of a few states that requires an academic degree plus experience or training.

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[7] National Association for Child Care Management, "Minimum Standards for Day Care Centers," Washington, D.C., April 1983.

The National Day Care Study also investigated four aspects of caregiver qualifications: (1) years of formal education regardless of subject matter, (2) presence or absence of specialized preparation relevant to young children either within a formal degree program or a training program, (3) amount of day care work experience, and (4) length of service at the current center.

The study found that the amount of formal education and day care experience had only a scattered relationship to child and caregiver behavior and no relationship to test score gains in school readiness skills. However, education and training in child related fields such as developmental psychology, day care, early childhood education, or special education were associated with distinctive patterns of child and caregiver behavior and higher gains in test scores. Teachers with special training engaged in substantially more social interaction with children than those without such training. The data indicated quite clearly that education in fields unrelated to child care and day care experience were not equivalent to child related education and training in having a positive impact on day care.

The study recommended that caregivers should have participated in a specialized child related education/training program. Unfortunately, the data were not adequate to identify the form and content of the desired education or training.[8]

The current rules are correct in emphasizing education and training in early childhood development. Since data from the National Day Care Study show that requirements for a degree and work experience are not related to any measures of quality, these requirements could be reduced. More emphasis should be placed on early childhood training courses. The current rules allow workshops and seminars to count for credits. However, the department has yet to clarify what can be accepted for credit.

The department should encourage participation in seminars offered by early childhood associations and others in the field by giving credit for any courses that might be useful. The department should also sponsor training sessions of its own.

It is important for centers to have a qualified director as the director sets the tenor of the entire child care program. However, since the director is considered to be qualified in administering an early childhood program, the director should be allowed some flexibility in selecting the staff that the director finds qualified to care for children. Some directors have reported that they have difficulty finding staff who meet all the requirements. There is a shortage of preschool teachers, and these teachers are poorly paid. Many work for minimum wages. Center directors also complain that those with academic credentials are not always good with children.

The rules allow DSSH to waive staff qualifications for teachers and assistant teachers if no qualified applicants are available. To receive a waiver, the center is required to do the following: (1) advertise the position in the largest newspaper in the county, (2) the prospective employee must meet the requirements for the next lower position, (3) a written plan must be presented to DSSH on the steps to be taken to bring the prospective employee up to qualifications, and (4) a waiver must be received prior to the hiring of the new teacher.

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[8] Abt Associates, *Children At The Center*, pp. 160-161.

The rules do not say that the center must hire any qualified applicants that apply because of the advertisement. They simply say that the center must advertise. Licensing workers say that centers already plan to hire the individual for whom they are requesting the waiver. Advertising in the newspaper is merely a costly formality that they are required to follow.

Another rule adding to personnel costs and problems in running a center relates to substitute teachers and temporary hires. The rules say that when a teacher or assistant teacher is away on an emergency or *unplanned* basis, a substitute can be hired. The substitute must be 18 years old and have participated in an orientation program of the facility. However, when a staff is away on a *planned* basis, a temporary hire must be employed. Temporary hires must meet all the qualification requirements of the position they are filling. This fine distinction makes it difficult for centers to find replacements for those who plan to be away and requires licensing workers to determine when an absence is planned and when it is unplanned. This distinction should be eliminated. Considering the difficulty of finding temporary staff, the directors should have the flexibility to hire any substitutes over 18 that they want.

The qualification requirements also inhibit the growth and availability of alternate forms of child care. For example, PWD was asked for an opinion on whether a center which is staffed by parents on a rotating basis is licensable. The only continuing position in the center is that of the director who is elected by the parents for a one-year term. It was noted that the facility had a long history of providing good child care in a cost effective manner. PWD was asked if an exception could be made for the school. PWD responded in a declaratory ruling that the facility could not be licensed and that no exception could be made on staff qualifications.[9]

There is no question that the facility is providing a service that is safe for children and meets with the approval of parents. However, instead of questioning the appropriateness of a rule that would prohibit such an operation, PWD simply decided that the facility was not licensable. The school was subsequently licensed as a demonstration project. For the past two years, the center has been uncertain as to its status and its future.

We understand that PWD is now proposing a rule change to exempt parent cooperatives from having to meet staff qualification requirements if the director is qualified. Instead of simply exempting parent cooperatives, PWD should review the appropriateness of all of its rules on staff qualifications. They impose added costs and inhibit other kinds of innovative services that have been carried out successfully elsewhere, such as child care by senior citizens.

Nutrition and health standards. There are numerous rules relating to health standards for children and for staff. Many of these are vague and unnecessary, and they impose unnecessary costs on centers.

The nutrition requirements in the rules are the focus of numerous complaints. Providers say that the requirements have resulted in unnecessary costs. Many child care providers complain about the rule requiring each center's food service to be reviewed by a qualified nutritionist. It is estimated that these reviews cost between $60-$100. They must be done for all centers, even those that serve only a snack.

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[9] State of Hawaii, Department of Social Services and Housing, Public Welfare Division, Honolulu, Social Services Declaratory Ruling No. 82-33, 10/6/82.

The rule itself is vague. There are no guidelines on who qualifies as a nutritionist or what is to be reviewed or what the standards are for such a review. Consequently, enforcement is inconsistent. Licensing workers report that different nutritionists review different aspects of the food program. Some will merely check records of menus while others will check the actual portions served.

Some licensing workers find it unreasonable to require centers serving only snacks to have a nutrition review and simply ignore the requirement. On Kauai, there is no qualified nutritionist to conduct the review so the requirement is not being enforced. Some workers do not require a nutrition review of centers that are part of the U.S. Department of Agriculture (USDA) child care food program as these centers are already monitored by USDA. PWD has issued a declaratory ruling that USDA food reimbursement centers need not have a separate nutrition review.[10] However, centers were not uniformly informed of this, so some are still under the impression that they must retain a nutritionist.

Another nutrition rule is that one snack must be milk or a calcium equivalent when children are in a center for eight hours or more. Some children of Asian ancestry are said to be allergic to milk, and providers report that they often have to throw out milk because the children will not drink it. The rules permit centers to serve a calcium equivalent. However, the equivalent would primarily be milk products such as cheese or ice cream to which the children would still be allergic. In addition, this requirement is not always feasible for after school programs that care for children in the summer. These are often held in public school facilities, and the programs have no access to refrigeration or storage. A reasonable alternative would be to allow juice to be substituted for milk.

Nutrition rules also say that centers must provide children with the minimum amount required by the USDA child care food program by offering snacks in addition to food the children bring when parents provide the lunches and snacks. This is clearly unreasonable and unenforceable. Providers have no way of knowing what each child will bring and what would be needed to bring the child's food up to USDA requirements.

The health standards impose numerous unnecessary paperwork requirements. Section 892-19 requires centers to make provisions for health consultation with a private physician or a community health organization in developing health policies and for keeping them current. It is not clear what is required specifically in these health policies or the purposes for which they are to be used.

PWD was asked to clarify what health policies the centers are to develop. PWD issued a declaratory ruling saying that the "health policies" referred to in the rules means that each center must have policies pertaining to the child's health, emergency care provisions, first aid, admission of ill children, nonadmission of ill children, admission of children with handicaps, daily nutritional requirements, drinking water, and mental health.[11] The above list merely reiterates the existing categories of rules. Instead of clarifying the issue, the declaratory ruling resulted in further confusion. Licensing workers still do not know how to enforce this as a condition for licensure.

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[10] State of Hawaii, Department of Social Services and Housing, Public Welfare Division, Honolulu, Social Services Declaratory Ruling No. 83-3, 2/28/83.

[11] State of Hawaii, Department of Social Services and Housing, Public Welfare Division, Honolulu, Social Services Declaratory Ruling No. 82-14, 6/22/82.

Section 892-30 governs the personal health habits of providers and requires each center to have written guidelines covering appropriate aspects of personal health care that have been developed through a community health agency which are made known to the caregiver. Licensing workers report that they do not know what the written guidelines are supposed to contain. They say that they have asked Department of Health's public health nurses about this, and the nurses have no idea of what DSSH intended by the rule.

PWD was asked for clarification on how centers are to comply with this personal health care rule. In June 1982, PWD responded that guidelines on this had been requested from the Department of Health and that these will be sent to the branches when received.[12] To date, no guidelines have been received. When licensing workers are asked by providers what they must do to comply, they usually tell the providers to have a policy that says something about personal cleanliness and handwashing. Centers should not be required to prepare documents to cover matters that the department has yet to define.

Centers are also required to integrate mental health concepts into their programs by interviewing parents prior to a child's admission into the program, by providing their staff with an orientation to state and other mental health programs, and referring parents to sources of help when needed. Licensing workers see no point in these rules as providers generally respond in the affirmative when asked if they do this.

One director responded that she did not interview the parents. Instead, she has open houses for both parents and children, children are allowed to drop in prior to their enrollment to become familiar with the facility, and on occasion, she will visit the home. The licensing worker accepted this as complying with the rule.

Finding child care for handicapped children is a special problem. The rules tend to make this even more difficult. It permits handicapped children to be admitted only after consultation between the child's source of health care and the center's health consultant. If the child's health care provider deems it advisable, the staff must have special training, and added staff and equipment are to be available to cover whatever the child might need. Most schools will not bother with these requirements when there is sufficient demand for care for children without handicaps.

Environmental health standards. Environmental standards in the rules need to be improved as well. Some are unnecessary, others are not sufficiently explicit, and some add to a center's costs for little reason.

Centers are required to have a written disaster plan for emergencies such as fire, flood, or natural disaster. This plan must be approved by the fire inspector, the health consultant, or the Red Cross. We found no evidence that this provision is being enforced consistently. Licensing workers will sometimes check to see if the center has a fire exit diagram that is posted in the classroom or the bulletin boards. However, these are not plans approved by the Department of Health, fire inspector, or the Red Cross. If a diagram is all that is necessary, then the rule should be simplified to specifically require a fire exit plan and fire drills.

Section 892-32 requires centers to have written accident prevention practices and policies. The purpose of this is to reduce risks of accidental injury. Here again, licensing workers have no guidelines for assessing the adequacy of any policies that are submitted. Whatever is submitted is accepted.

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[12] *Ibid.*

Environmental health rules include standards for food preparation. Some centers have difficulty meeting the Department of Health's rules for food service establishments. These include requirements for ventilation hoods and other equipment.

Another rule having a negative impact is Section 892-39 which says that a certified lifeguard must be on duty at all times when a swimming pool is in use. The rules say nothing about lifeguards at beaches, but the rule has been interpreted to mean that centers must have a certified lifeguard with them when they go to the beach. Some centers tried to comply with this by hiring lifeguards on an hourly basis when they go to a pool or on excursions to the beach. However, they have been warned by the Department of Labor and Industrial Relations that they cannot do this on a contract basis and that the lifeguards must be center employees. Some providers complain about the increase in costs resulting from having to put lifeguards on their payroll. They also question the need for a lifeguard when they go on outings such as walks on the beach.

Program Modifications

Chapter 892 contains rules for program modifications which allow DSSH to license child care centers for drop-in care, night care, and before and after school care. The rules also allow DSSH to issue demonstration program licenses to centers that do not meet all the regular requirements.

Drop-in care. Centers that provide drop-in care must comply with all the rules except for the requirement for a health clearance for the child and for consultation between the center's medical consultant and the child's source of health care. The major additional requirement for drop-in care facilities is that they must care for drop-in children in separate areas or groups. This means that they must be segregated from other children who attend the center on a regular basis. The rationale for this is that drop-in children do not have their health records and may pose a health risk to others or be at risk themselves.

For all practical purposes, this rule has effectively prevented the development of drop-in care. Despite the need for this service, there is only one drop-in care center in the islands. Given the cost of space in Hawaii, providers who are interested in providing drop-in services for parents or tourists or in shopping centers, find it economically unfeasible to have a separate area for drop-in care. In addition, providers say that they would not want to isolate a drop-in child from other children who may be at a center as this may be psychologically damaging to the child. The actual extent of health risk posed by drop-in children is unclear. Because of the demand for this type of care, the issue should be re-examined and explored more fully.

Night care. Programs offering night care must meet all center requirements. In addition, the provider must pay special attention to providing for a transition to night care. The children must not sleep in a detached facility and there must be comfortable beds or cots and night clothes. The beds are required to be at least three feet apart and there must be at least 50 square feet of space per child.

There is increasing demand for night care, particularly from those who work in the evenings. One provider who was interested in providing such care found these additional rules to be unreasonable. For example, the rule requiring night clothes is interpreted to mean that children must have pajamas. Many children here wear t-shirts to bed and do not feel comfortable in pajamas. The provider also wonders why 50 square feet of space is needed per child for night time care when only 35 square feet of space is needed for day time care.

Before and after school care. The need for before and after school care has become critical. In 1984, Congress passed a resolution making the first week of September "National School-Age Child Care Awareness Week." Congress is also considering appropriations for school-age child care programs in communities.[13]

Hawaii recognized this need in 1977 when the Legislature enacted Act 41 which sought to promote after school child care programs by making school facilities available to individuals, organizations, or agencies for such programs. It was hoped that after school programs on school grounds would ease the task of finding care for children and reduce the cost of such care. The act provided for the Department of Education (DOE) to enter into agreements with individuals, organizations, and agencies for the use of public school buildings and facilities.

An inventory of licensed before and after school child care programs in 1983 showed that of 68 such programs operating in the State, 46 programs were at DOE facilities.[14] The majority of these were operated by the parent teacher associations of the various schools, the Young Men's Christian Association (YMCA), or the Young Women's Christian Association (YWCA).

Before and after school programs are required to meet all the rules for centers but are allowed certain exemptions and modifications. For example, they do not have to meet all the administrative and program requirements, and the staff qualifications are considerably less stringent. The qualifications for a director is two years in a college or university human services program. The staffing ratio allows a program leader to be a high school graduate with two years of experience in working with school aged children. Assistant leaders must be 18 years old and undergo an orientation provided by the program. Aides between ages 13 and 18 are permitted although they may not be counted in the staff-child ratio.

Currently, the law excludes the following groups from licensing:

- individuals caring for a related child;
- neighbors and friends caring for children less than three hours a day and not more than two times a week;
- a kindergarten, school, or program licensed by another department;
- a program which provides exclusively for specialized training or skill for children from ages 5 to 17 including but not limited to athletic sports, foreign language, Hawaiian language, drama, dance, music, or martial arts;

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[13] *SACC Newsletter*, v. 2, no. 2, Fall 1984.

[14] Mary Anne Migan and Gayle N. Gibby Fukutomi, *Inventory of Before- and After-School Care Programs in Hawaii, 1983*, Office of Children and Youth, no date.

- a community association which operates for the purpose of promoting recreation, health, safety, or social group functions for children ages 5 to 17; and
- other such organizations as the Director of DSSH may choose to exclude.

Regulation of before and after school programs is inconsistent. The YMCA's before and after school programs are the largest in the State. These programs are exempt from licensing. An opinion from a deputy attorney general in 1982 stated that the YMCA is not subject to licensure because it is an organization which establishes programs to conduct athletic and/or social group functions.[15]

Although the YMCA programs are exempt, the YMCA branches on the neighbor islands have chosen to license their before and after school programs so that they could qualify for government funds for child care. Before and after school programs operated by the YWCA have not been declared exempt and they continue to be licensed.

Private providers who have to comply with the rules see them as inequitable. They say that they operate the same kind of programs as the YMCA but one is exempt and the other not.

There is concern for the safety of children in before and after school programs. These programs care for children under the age of five. There must be adequate supervision for these children. At the same time, before and after school programs should not have to meet all the day care requirements that are applied to full-time center care. Requirements such as those relating to nutrition add to the cost of such care unnecessarily.

Others are not necessary. For example, Section 892-33 requires the outdoor space to be fenced or to have natural barriers to deter children from getting into unsafe areas. Recently, a licensing worker asked if before and after school programs must also meet this requirement. PWD responded that they did. This created a problem as many before and after school programs meet in school facilities. These facilities are often not fenced, particularly in rural areas. Under this new ruling, before and after school programs in unfenced school facilities can no longer be licensed, thereby making these programs unavailable to children needing care.

We believe that the best approach to ensuring the safety of children in these programs, without reducing their availability and increasing their cost, is a mandatory registration program with minimal requirements for supervision of children. This would include provisions on staff-child ratios and qualifications of staff.

Under this system, all before and after school programs would be required to register with DSSH and certify that they meet with the department's requirements for supervision and care. The department would not inspect all of these programs but would check them on a random basis. Before and after school programs would be required to inform parents of the registration requirements so that parents could assume some responsibility for monitoring the care given to their children in these programs.

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[15] Memorandum to Jane Okubo from Steven K. Chang, Deputy Attorney General, Subject: YMCA exemption from licensure as a day care center on the basis that it is "an organization established to conduct athletic or social group functions" pursuant to Section 346-19, HRS, November 23, 1982.

New rules establishing minimum standards for registration for all before and after school programs should provide better protection to children than the present system where some are licensed and the great majority exempt. A registration program would also furnish better information to DSSH on the number and types of before and after school programs currently being offered. This information can be passed on to parents who need assistance in locating such care.

The availability of before and after school care needs to be expanded. Act 41, SLH 1977, was helpful in making DOE facilities available for such care. However, the decision on whether a before and after school program can operate at any particular DOE facility is made by that school's principal. There have been complaints that many principals are reluctant to allow such programs at their schools. We believe that it would be useful for the Board of Education to adopt a policy encouraging the use of school facilities for before and after school programs and requiring the facilities to be made available to those interested in operating such a program. The burden of proof for not allowing such a program should be placed on the principal.

Demonstration projects. The intent behind the demonstration project rules was to stimulate innovative forms of child care and to assess their feasibility. The rules allow demonstration projects to be established for a specific purpose upon approval from the department. The applicant must submit a proposal describing the purpose of the project, length of the project, rules to be exempted for the project, and justification for the project. Within the last quarter of the time specified for the demonstration project, a written report must be submitted to the department on developments, findings, and recommendations for further study or for revising the day care rules.

So far, requests for demonstration project status have been granted to centers for infant care and to a parent cooperative.

The rules for demonstration projects are completely inadequate for determining what kinds of projects should be licensed or how they should be monitored or evaluated. DSSH has granted demonstration project licenses for purposes other than testing the feasibility of alternate forms of child care. In practice, the rules are being used as a catchall for programs that cannot be licensed under Chapter 892 for various reasons. The department is using the demonstration project rules as a loophole for deficiencies in the rules that prohibit valid and safe kinds of child care.

This has resulted in confusing and inconsistent enforcement of the rules. Some agencies are allowed to provide infant care while others may be under the impression that this is prohibited. Some are allowed to waive staff qualifications and others not. Instead of stimulating the availability of alternate forms of child care, the provision for demonstration licenses has discouraged innovation. It has also allowed the department to temporize in making the necessary changes in the rules.

An example of how the demonstration project rules have been misused is illustrated by the following. A parent cooperative that had been licensed by DSSH since 1966 found that it could not be licensed as it did not meet new staff qualification requirements because it used parents on a rotating basis. Since it could not qualify for a regular license, it submitted a proposal for licensing as a demonstration project in August 1982. PWD ruled that the school could not be licensed if the staff did not meet the qualification requirements, and it could not be considered a demonstration project because it had been in operation for over 15 years.

The center appealed this decision and a hearing was held on the matter. The hearing officer ruled that 15 years of operation did not bar the school from being considered a demonstration project as there is no rule saying that 15 years of operation disqualifies a program from demonstration project status.

In August 1983, the Director of DSSH informed the center that the department had decided to approve the program as a demonstration project because it had made a positive assessment of the program. The director wrote that the department had accepted the center's petition for a rule change and that within the next 60 days, the department would be reviewing the most feasible and responsible way to incorporate the licensing of parent cooperative programs into the licensing rules.

In April 1984, PWD was asked by Oahu Branch whether the center should continue to be licensed as a demonstration project as the license was due to expire in July 1984. PWD responded that it was reviewing the feasibility of a rule change with select members of the State Advisory Committee on Day Care Services.

Today, two and a half years after the center first applied, and a year and a half after the center was told that a rule change would be forthcoming, its status remains uncertain. No revisions have been made to the rules. DSSH has used the demonstration project license as a convenient pretext. The operations of the center are not monitored any more closely than a regular center program, and they have no particular hypothesis to demonstrate.

As part of its rule revision process, the rules for demonstration projects should be clarified so that they actually accomplish the purpose of stimulating alternate forms of child care. Additionally, the rules for regular licenses should be amended to permit the delivery of safe and effective forms of child care, such as parent co-ops.

Need for Rules for Infant-Toddler Care

There is a critical need for infant-toddler care. By all reports, this is the area of greatest demand. Births in Hawaii have shown a consistent increase in recent years, from 17,568 in 1979, to 18,230 in 1981, to 18,735 in 1982.[16] Yet, since there are only 223 licensed family day care homes in the State, and each home is allowed only two children under two, there is regulated care for only 446 children under two in the entire State.

PWD's approach to the regulation of infant-toddler care is highly questionable. It has prohibited center and group home care for children under two without any statutory basis for this prohibition, and it has been dilatory in developing rules to govern infant-toddler care.

A 1983 survey of child care centers in the United States showed that Hawaii is the *only* state in the nation to prohibit infant-toddler care in centers. All other states provide for center infant-toddler care.[17] This prohibition is not in the best interests of children as it eliminates routine care for children in a regulated center environment. It is particularly inappropriate as the department is allowing some centers to provide infant care under generally unregulated conditions.

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[16] State of Hawaii, Department of Planning and Economic Development, *State of Hawaii Data Book, 1983*, 1984, p. 66.

[17] National Association for Child Care Management, "Minimum Standards for Day Care Centers," Washington, D.C., April 1983.

It is not clear that the department has the authority to impose such a categorical prohibition. Agencies may only issue rules that conform with and are consistent with statutory provisions. Agencies may not exceed the authority conferred upon it. Accordingly, "An administrative body may make only such rules and regulations as are within the limits of the powers granted to it and within the boundaries established by the standards, limitations and policies of the statute giving it such power, and it may only implement the law as it exists."[18]

Sections 346-20 and 346-21, Hawaii Revised Statutes, authorize the department to prescribe rules to protect the best interests of minor children and to license child care facilities that meet the department's minimum standards. It does not authorize the department to prohibit centers from providing care to children under two. There is no valid basis for the prohibition.

In March 1977, the original State Advisory Committee on Day Care Services tabled the topic of center care for infants until other work on the rules was completed. The committee planned to go into the issue in October 1977.[19] However, PWD did not follow-through on this issue. The question of infant care resurfaced when the committee was reappointed in 1981, and the committee identified it as a primary concern. Based on the work of the advisory group's subcommittees, the department issued "DSSH Guidelines for Group Care for Infants."

The guidelines are worse than useless because they offer the illusion of protection for infants and toddlers. DSSH is using them to license center infant care as demonstration projects even as it recognizes that they are deficient. When one of the licensing branches questioned whether deviations could be permitted from the guidelines, PWD responded, "Deviation from the 'DSSH Guidelines for Group Care for Infants' is permissible because these 'standards' were developed as a guide in assisting staff to assess justification for proposed exemptions, as required by 17-892-44(b)(5); these guidelines do not have the force and effect of rules which we feel are premature to develop, lacking the experiences yet in infant group care both at local and national levels."[20]

The guidelines are seriously inadequate in providing safeguards to infants and toddlers. They have no standards for such essential matters as proper storage and disposal of diapers. The guidelines only require that the center have a *statement of procedures* for supply and management of diapers and other infant supplies. Changing diapers in a sanitary manner may be the most important thing center operators can do to prevent the spread of infectious diarrhea, hepatitis A, and other communicable diseases. There should be rules on the proper storage of clean diapers and disposal of soiled diapers, disinfection of the diapering surface, proper cleansing of the child, handwashing, and preferably, the use of single service diapers and towels.

There are no rules to govern the feeding of children. The guidelines only require that there be a feeding schedule and that the child be held while being fed. Centers should be required to keep a daily log for each child of when the child was fed and amounts consumed. There must be rules on the proper storage and disposal of formula or breast milk and the use of sanitized bottles.

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[18] "Public Administrative Law," *73 Corpus Juris Secundum*, pp. 587-588.

[19] Meeting of the State Advisory Committee on Day Care Services, Public Welfare Division, March 9, 1977.

[20] Memo No. 2 to OBA(AB/DCLU) from PWA(PD—F&CS), Subject: Wesley Child Care Center Infant-Toddler Demonstration Project, 5/24/83.

There should also be rules to safeguard infants and toddlers from dangerous equipment that pose a choking hazard. For example, cribs should not have vertical slats that are more than a certain width.[21] Accordian style gates should be prohibited because they have been linked to a number of deaths. Provisions should also be made to cover all electrical outlets.

None of the above is being required at the present time. PWD's excuse is that there is insufficient information on infant care and that there is no evidence that children will be properly cared for in centers. While the results are not clear-cut, studies have shown that there are more similarities than differences among family day care, home care, and center care for infants. The three settings were found to be remarkably alike, and it was not obvious that any of the differences had a strong influence on development.[22]

In addition, numerous states have regulations for infant care. In no other state is such care prohibited. If PWD had made an earnest effort to explore this issue, it would have found that it had no valid basis for continuing this prohibition. The experience of other states and their rules provide a sound basis for the development of rules for Hawaii.

Recommendations

We recommend that the Department of Social Services and Housing immediately initiate a systematic rule revision process that takes into consideration the enforceability and the impact of the current rules and the trade-offs in costs and availability for higher standards that may not be needed for the minimum protection of children.

The department should base its rule revision on empirical research in child care. Rules that have no valid basis in protecting children should be eliminated. Efforts should be made to simplify the rules and to reduce paperwork and recordkeeping tasks.

The immediate initial focus for rule revision should be the regulation of infant-toddler care.

We also recommend that the department institute a mandatory registration program for all before and after school care programs and adopt rules establishing minimum requirements for supervision and care in such programs.

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[21] State of Montana, Department of Social and Rehabilitation Services, Community Services Division, *State of Montana. Supplemental Regulations for Infant Care*, June 1984.

[22] Douglas Frye, "The Problem of Infant Day Care," in Edward F. Zigler and Edmund W. Gordon (eds.), *Day Care, Scientific and Social Policy Issues*, Boston, Auburn House Publishing Co., 1982.

Chapter 6

THE REGULATION OF FAMILY DAY CARE HOMES

Family day care homes are the most widely used form of day care in the United States. In this chapter, we review the characteristics of family day care and its regulation. The effectiveness of state regulation of family day care is evaluated and recommendations are made on how it can be improved.

Summary of Findings

We find that state regulation of family day care homes has not been effective. Current regulations are unnecessarily cumbersome and attempts at enforcement have not been effective. The great majority of family day care homes remain outside the reach of the state regulatory program. An entirely different approach is required.

Background

Although family day care homes are the most widely used form of day care, not much was known about it until recently. It is largely informal care that is provided to children in a private home other than a child's own home.

Because of the lack of information, the U.S. Administration for Children, Youth and Families sponsored the National Day Care Home Study (NDCHS) in the mid-1970s, a four-year study exploring family day care along a number of dimensions, including community cultural patterns, daily experiences of children and their caregivers, parental preferences, costs, and the characteristics of the day care population.[1] The purpose of the study was to provide a basis for sound day care policies and programs.

The National Day Care Home Study provides the most comprehensive information to date on family day care. The four-year study was conducted at three sites selected for geographic, socioeconomic, and ethnic diversity as well as for diversity in approaches to the regulation of family day care. These sites were Los Angeles, Philadelphia, and San Antonio. Many of the findings from that report are relevant to our evaluation of family day care in Hawaii.

The study finds a large-scale demand for child care. This demand is projected to continue over the next two decades with the rate of increase expected to be particularly high for women with children under three. Most of this demand will be channeled into family day care homes since the study finds that parents have traditionally shown a preference for family day care for infants and toddlers.

The study categorizes family day care into (1) unregulated care, (2) regulated care in which the caregiver is licensed or registered with a regulatory agency, and

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[1] U.S. Administration for Children, Youth and Families, *National Day Care Home Study,* Washington, D.C., 7 v., 1981.

(3) regulated care in which providers operate as part of a system or network of homes under an umbrella agency.

The overwhelming form of family day care given to children is unregulated care. The study estimates that 94 percent of the total number of children receiving child care are in unregulated family day care. Only 6 percent of the total number of children are in regulated homes. Of this number, 3 percent are in independent homes and the other 3 percent are in sponsored homes that are part of family day care systems.[2]

There are some differences among the three categories of family day care. Unregulated family day care homes have the fewest children. They average only 2.8 children per home. Over 90 percent of all providers care for six or fewer children and 50 percent care for three or fewer.[3] Thus, caregivers comply with group size limitation regardless of whether they are or are not regulated. Over three-fourths of unregulated caregivers care for their own child or a related child at the same time. Most of these women do not feel that regulation is appropriate for them.

Although the researchers found reasonable continuity for children in family day care, many caregivers, particularly the unregulated caregivers, stop caring for children in their first year. Almost 50 percent of the unregulated caregivers are providing care on a short-term basis.[4]

One of the most striking findings from the study is the high level of involvement the providers have with children in their care. Overall, family day care providers spent nearly two-thirds of their day in child related activities. In addition, another 17 percent of their time was spent in supervising children or preparing for them. In general, regulated caregivers interacted with children the most while unregulated providers had the least direct involvement. However, the researchers note, ". . . it is important to stress that NDCHS observers and interviewers were consistently impressed by the family day care that they saw regardless of regulatory status of the home."[5]

Parents report work as the principal reason for day care. The preference is for care in the child's own home for children under one, family day care for one- to three-year olds, and center care or nursery schools for those over three. On the whole, parents seem to feel that their children's needs are met nearly all the time. Only 10 percent of the parents report negative experiences. The most commonly mentioned bad experience was an injury to the child.[6] Other complaints are inadequate supervision and physical abuse. Generally, there is a high level of interaction between parents and family day care providers compared with other day care settings. They appear to be mutually interested in a relationship centered on the child but based on friendship between the adults.

The authors conclude:

> "In general, the observations showed family day care homes to be positive environments for children. It was observed that caregivers spent a considerable portion of their time in direct

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2. Patricia Divine-Hawkins, *Family Day Care in the United States, National Day Care Home Study Final Report, Executive Summary,* U.S. Administration for Children, Youth, and Families, 1980, pp. 3-5.

3. *Ibid.*, pp. 16-17.

4. *Ibid.*, p. 19.

5. *Ibid.*, p. 31.

6. *Ibid.*, p. 23.

interaction with children, and the time spent with children seems to be appropriate to the needs of children at various ages. Caregivers rarely expressed any negative affect toward the children. The caregivers' homes were generally safe, home-like environments which were less structured and homogeneous with respect to children's ages than day care centers."[7]

Regulation of Family Day Care Homes

Regulation of family day care grew rapidly after the 1950s. In 1957, 14 states regulated family day care homes. By 1971, family day care was regulated in almost all states.[8] Despite this, there was little uniformity among the states in their regulatory practices. One reason for the adoption of the Federal Interagency Day Care Requirements was the need for uniform national criteria for the federal purchase of child care.

Since the elimination of federal requirements, variations among the states have increased and the shift is toward less regulation. Today, there are three main forms of regulation: licensing, registration, and certification.

Licensing is the traditional form of regulation in which a home is given formal permission to provide child care by a state or local agency. The caregiver is required to meet all applicable standards for operating a home. Under a licensing system, homes that are not licensed are illegal and prohibited from providing child care.

Registration is a newer form of regulation which stresses self-reporting by the caregiver and consumer awareness. Under this system, the caregiver is responsible for determining whether the applicable standards are met. Typically, instructions and procedures for self-review are mailed to the caregiver by the registering agency. Upon receipt of the completed information by the agency, the caregiver is registered and given permission to operate. The agency may make inspections on a random basis. Depending on the state, registration of family day care homes may be either mandatory or voluntary.

Certification is a form of regulation that is used for purchase of care. States that have no regulation use certification standards to determine eligibility for federal Title XX funds for child care.

Table 6.1 shows the status of regulation in the 50 states in 1982. There is little uniformity. Even the definition of family day care varies widely. In some states, any home accepting one child is considered a family day care home and is regulated. In other states, family day care homes are those that care for six or more children.

A 1982 survey of family day care regulations found that most states are changing their regulations. Fourteen states now use registration to regulate family day care homes. At the time of the survey, 12 states were proposing or intending to propose legislation for registration and at least six of those states hoped to have a registration law passed in 1982.[9]

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7. *Ibid.*, p. 35.

8. Steven Fosburg, *Family Day Care in the United States: Summary of Findings, National Day Care Home Study v. 1*, U.S. Administration for Children, Youth and Families, 1981, p. 25.

9. Diane Adams, "Family Day Care Regulations: State Policies in Transition," *Day Care Journal*, Summer 1982, p. 10.

Table 6.1

Comparative Licensing Standards—Fifty States

State	*Form of Home Regulation*	*Number of Children Covered (Including Own Children)*
Alabama	License	1–6*
Alaska	License	4–10
Arizona	None, except for public dollars	None for less than 5
Arkansas	License	6–10
California	License	1–6
Colorado	License	1–6
Connecticut	License	1–4
Delaware	License	1–6
Florida	License (optional with county)	1–5
Georgia	Mandatory registration	3–6
Hawaii	License	2–5
Idaho	License	1–6
Illinois	License	3–8
Indiana	License	1–10
Iowa	Voluntary registration	1–6
Kansas	License and voluntary registration	1–6 (register), 7–10 (license)
Kentucky	License	4–12
Louisiana	None, except for public dollars	None for less than 6
Maine	License and mandatory registration	3–12
Maryland	Registration	1–6
Massachusetts	Mandatory registration	1–6
Michigan	Mandatory registration	1–6
Minnesota	License	1–5
Mississippi	License	6–15
Missouri	License	4–6*
Montana	Mandatory registration	1–6
Nebraska	Mandatory registration	1–8
Nevada	License	5–6
New Hampshire	License	4–6
New Jersey	None, except for public dollars	None for less than 6
New Mexico	License	4–6
New York	License	1–6
North Carolina	Registration with no standards	2–5*
North Dakota	License	1–7
Ohio	None, except for public dollars	None for less than 4
Oklahoma	License	1–5
Oregon	Voluntary registration	1–5
Pennsylvania	Mandatory registration	4–6*
Rhode Island	License	1–6
South Carolina	License for public dollars and voluntary registration	1–6
South Dakota	Voluntary and mandatory registration	1–12
Tennessee	License	5–7*
Texas	Mandatory registration	1–6*
Utah	License	3–6
Vermont	License	1–6
Virginia	License	5–9
Washington	License	1–6
West Virginia	None, except for public dollars	None for less than 7
Wisconsin	License	4–8
Wyoming	License	2–6

*Does not include own children.

Source: Diane Adams, *National Survey of Family Day Care Regulations: Summary of Findings*, July 1982, pp. 10–14, (ED 220 207).

The survey also found a move to exempt more people from regulation. Several states made changes to exempt providers who serve only a few children. New Mexico had introduced legislation that would exempt those caring for fewer than six children. As previously noted in this report, Louisiana had repealed its licensing law for both centers and homes and now licenses only those facilities from which the state purchases care.

The survey found that there were a number of policy issues. Among these were:[10]

- the rights of children to be protected;
- the rights of child care providers to carry on a legitimate home business without an infringement of their rights;
- the extent to which state laws can adequately regulate all homes that care for children; and
- the ability of the states to enforce the laws.

Apparently, states were coming to the conclusion that more regulation would not improve either the supply or the quality of family day care. On the basis of criteria such as equity, efficiency, and political feasibility, registration was seen as a favored policy option.

Registration as an alternative. There are several reasons for this shift to replace licensing with registration. Licensing has not been effective. There is general agreement that at least 90 percent of all family day care homes remain unregulated. Although most states have laws regulating family day care homes, the National Day Care Home Study found that the sheer number of homes and the shortage of manpower precluded effective enforcement of the law. The study notes, "By its very nature family day care is very costly for the states to supervise. A typical licensed home may have only three children. On a per-child basis the cost of licensing and monitoring a home is therefore burdensome in comparison with the costs of monitoring and licensing a day care center, where the average enrollment may be 50 or more."[11]

Others in the field suggest that family day care providers fail to obtain licenses because they may be unaware of the law or they perceive it as too complicated. There also appears to be little reason to be licensed as both providers and parents observe that there is little or no enforcement and no serious penalties for not observing the law. Caregivers may also be reluctant to undertake costly renovations that might be required to bring their homes up to standard and they may resent the intrusion of inspectors into their homes.[12]

Experience in states that have adopted registration show that it is a better strategy for protecting children. The following are seen as some of the advantages of registration:

- the number of homes regulated increases so that family day care becomes more visible,
- licensing staff are freed to concentrate on problem facilities instead of routine licensing,

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[10] *Ibid.*, p. 13.

[11] Fosburg, *Family Day Care in the United States*, p. 27.

[12] Gwen Morgan, "Can Quality Family Day Care Be Achieved Through Regulation?" in *Advances in Early Education and Day Care*, v. 1, Greenwich, Conn., JAI Press Inc., 1980, pp. 77-102.

- parents are given more information and a larger role in evaluating day care homes.

The Michigan Department of Social Services conducted a two-year study to determine whether registration would be more appropriate than licensing. Three approaches were used in matching sets of counties: (1) registration with staff training, mass media information, and information to day care providers; (2) licensing with enrichment of traditional practice through staff training, mass media information, and information to day care providers; and (3) licensing as traditionally practiced.

The study found that the greatest increase in the number of homes regulated occurred under registration. Registration was the least expensive form of regulation. There was no difference among the providers in their attitudes to the three different forms of regulation. The investigators concluded that registration was easier, less expensive, and capable of regulating more homes. However, it did not result in as much compliance as licensing. The trade-off appeared to be between covering more homes at less cost somewhat less effectively or covering fewer homes at higher cost somewhat more effectively.[13]

Texas adopted a registration system in 1975. The primary reasons for the decision to adopt registration were to reduce costs and to bring more underground caregivers under regulation. The National Day Care Home Study found that, "In practice, registration has lowered the per-home cost of regulation by reducing the level of state screening and monitoring and by dramatically increasing the number of homes falling under the regulatory umbrella. The outcome of DHR's [Texas Department of Human Resources] recent evaluation of registration implementation reassures DHR officials that registration is working better than licensing previously did: the number of regulated homes has increased significantly; providers tend to view registration as an appropriate method of regulation; costs per unit of registration are lower than the costs for licensing; sample evaluations have indicated a high degree of compliance with minimum standards; and examination of child abuse and neglect complaints do not indicate any greater danger to children under registration."[14]

In September 1983, the Wisconsin Department of Health and Social Services appointed a Task Force on Family Day Care Regulation to examine the use of registration as a regulatory measure. After reviewing the advantages and disadvantages of various regulatory systems and comparative data on registration from various states, the task force proposed a registration system for family day care. It said, "A sound registration system would significantly increase the number of children under the protection of regulation, increase consumer awareness of standards of care, and simplify the regulatory system for family day care."[15] The issue of regulation is still under discussion currently; however, its feasibility is being explored through pilot projects using registration in three Wisconsin counties.

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[13] Lela B. Costin, *Child Welfare: Policies and Practice*, 2d ed., New York, McGraw-Hill, 1979.

[14] Fosburg, *Family Day Care in the United States*, p. 29.

[15] Wisconsin Task Force on Family Day Care Regulation, *Proposal For a Registration System for Family Day Care Homes, Final Report of the Task Force on Family Day Care Regulation, Day Care/Child Development Advisory Committee*, Wisconsin Department of Health and Social Services, April 1984, p. 3.

The Wisconsin Task Force concluded that registration would be simpler and more understandable:

- It would do a better job of involving parents in selecting and monitoring care arrangements;
- The system would reduce risk for greater numbers of children as more providers would become regulated;
- Many more homes would be regulated with the same staff resources;
- It would be less cumbersome for providers to provide care legally, thereby increasing the supply of caregivers;
- As caregivers come out from underground, there would be increased tax revenues;
- As more caregivers become known, information and referrals would be more effective;
- There would be greater options for parents and an increased supply of caregivers; and
- Finally, the quality of care would be improved by increasing information on standards of care, increasing parental choice and promoting competition, allowing more training for providers, and increasing their access to child care food programs.

The National Day Care Home Study notes that, generally, states that adopt the registration method see this as a less costly procedure for bringing family day care homes into a regulated environment. "While some critics cite registration as a regulating mechanism that does not provide adequate quality control, proponents of this self-certification method consider it preferable to bring large numbers of providers into compliance through registration than to license only a small portion of providers at higher costs while backlogs accumulate and large numbers of providers remain unlicensed and uninformed about standards."[16]

Family Day Care in Hawaii

The characteristics of family day care in Hawaii are no different from those in other states. There is the same, if not more urgent, demand for family day care because of the very high proportion of working mothers. There is also the problem of unlicensed care. It is generally accepted that only 10 percent (if that many) of the family day care homes currently providing child care are licensed. There is no reason to believe that the explanations for unregulated family day care are any different in Hawaii than those for other states.

Those in the child care field point to the complexity of rules for family day care. Taxes are another reason given for not seeking licensure. Once licensed, family day care providers would have to declare their income and pay general excise taxes. There has also been little enforcement of licensure. The Department of Social Services and Housing (DSSH) merely asks unregulated providers who come to its attention to apply for licensure. No penalties are applied. Under these conditions, there are no incentives for family day care providers to become licensed but many advantages to remaining unlicensed.

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[16] Fosburg, *Family Day Care in the United States*, p. 27.

Regulation of family day care homes. Chapter 891, the rules for family day care homes, is a curtailed version of the rules for child care centers. The chapter consists of 29 pages of regulations covering the same categories as the rules for child care centers: licensing procedures, administration requirements, program requirements, staffing requirements, health standards for children, health standards for the provider, environmental health standards, physical facility standards, and program modifications.

Many of the standards are inappropriate for a service that is seen primarily as informal babysitting type care. According to the National Day Care Home Study, most providers are high school graduates who do this on a short-term basis and are also caring for their own children and the children of relatives at the same time. If this finding can be generalized to Hawaii, the current rules would be unnecessarily complex and burdensome for these kinds of providers and discourage them from becoming licensed. A neighbor island representative on the State Advisory Committee for Day Care Services reported that, given the type of service provided, the family day care homes on Kauai found the rules to be overwhelming and the DSSH had lost a lot of prospective homes because of the rules.

Chapter 891 contains many unnecessary and unenforceable rules as well as rules that are unnecessarily stringent. The following are some examples:

- The rules require family day care homes to have written operational policies covering items such as ages of children accepted, hours of operation, refund policy, transportation arrangements, and insurance coverage. This paperwork is unnecessary as DSSH does not make any assessment of the policies in the written statement. In fact, although the provider is asked for a written policy on insurance, they are not required to carry insurance. The provider is also asked to maintain a roster of children and to keep a daily attendance record. The reason for this is not clear.

- When transporting children, providers are required to harness all children less than 40 pounds in a crash-tested car seat. This requirement is inconsistent with and more stringent than state law that says that only children under three must be properly restrained in a restraint system approved by the U.S. Department of Transportation. This means that children over three but less than 40 pounds must be harnessed in a car seat instead of being allowed to use a seat belt.

- The rules have the same program requirements for physical, emotional, social, and intellectual development and for program materials and equipment as the rules for child care centers. These are unnecessarily forbidding as well as unenforceable as licensing criteria.

- The providers are required to communicate regularly with parents and to assist the child in making the transition from the family day care home to a new day care setting, kindergarten, or school. This is primarily a parental responsibility, not that of the provider.

- Providers are required to attend an orientation program approved by DSSH before they can be licensed. The orientation program must cover the purpose and function of child care, licensing, insurance, taxes, and discipline of children. To be relicensed, providers must also submit written evidence of efforts to increase their knowledge in 12 areas relating to the care of children. However, DSSH has no formal orientation program and no such programs are offered on a regular basis. Individual licensing workers will hand out brochures on some of these subjects. The extent of orientation and monitoring of efforts to increase knowledge varies from worker to worker.

- Providers are required to have access to nutritional information provided by a qualified nutritionist or dietitian or qualified community health resource approved by the Department of Health (DOH). It is not clear who would be qualified to provide this service. This service is not furnished by DOH. In addition, even when parents provide food for their children, the provider must supplement the food the child brings to meet the minimum requirements of the U.S. Department of Agriculture's child care food program. This is clearly unreasonable as the provider has no way of knowing what food the child will be bringing.

The above examples illustrate the unreasonableness of some of the rules for family day care homes.

Here, as in other states, licensing has not been effective. As one writer says, "... trying to regulate family day care is like Prohibition: It was a noble experiment, but it has not worked. Only a small fraction of family day care subject to regulation has been licensed and there has been little or no enforcement."[17]

Registration as an alternative for Hawaii. Evidence from states that have adopted registration as the means to regulate family day care homes indicate that it has been successful. The Wisconsin Task Force on Family Day Care Regulation points out that rules that are difficult to enforce or that are not understood or shared by parents serve to increase risks for children. Enforceable registration standards, on the other hand, would reduce risks for more children by bringing more children into regulated settings and increasing public awareness of the rules and elements of good child care.[18]

States that have registration systems also report lower costs with registration than with licensing. Fewer workers are needed to register more homes. Table 6.2 provides some comparative data on the ratio of licensing workers to homes in states that register and states that license. While there is considerable variation, the ratio of homes regulated by a worker is substantially higher in states that use registration. For example, one worker can register 321.8 homes in Texas whereas in Connecticut one worker can license only 92 homes.

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[17] Norris Class and Richard Orton, "Day Care Regulation, The Limits of Licensing," *Young Children*, September 1980, p. 15.

[18] Wisconsin, Task Force on Family Day Care Regulation, *Proposal for a Registration System*, p. 11.

Table 6.2

Ratio of Licensing Workers to Homes

Registration		*Licensing*	
Massachusetts	1:321.8	Alabama	1:32.8
Oregon	1:123.5	Connecticut	1:92.0
Texas	1:119.7	Delaware	1:96.0

Source: Diane Adams, *National Survey of Family Day Care Requirements, Summary of Findings*, July 1982, p. 3, (ED 220 207).

We believe that a voluntary registration system would be a more effective means of regulating family day care homes. To encourage registration, incentives should be provided to caregivers such as training or home visits for consultation or referrals from parents for day care and reimbursements for child care food programs.

The new system could be patterned generally after the Texas program which emphasizes parental information. The Texas Department of Human Resources issues a "Parents' Guide To Registered Family Homes" which informs parents about what registration means and what standards the home is required to meet. Parents are also given examples of what to look for in a registered family home.

The minimum standards for registered family homes in Texas consist of simple rules on the permissible number of children in care, children's health records, caregiver qualifications specifying that the person must not have been convicted of various kinds of offenses, health and safety standards, and standards on the care to be given to children including rules on supervision and discipline. The requirements are clearly stated and readily understandable.

To implement a registration system in Hawaii, new rules should be developed which are simple, clear, and contain only the minimum requirements needed to ensure health and safety. These should cover the number of children in care, health requirements, fire and sanitation standards, supervision, discipline, and protection from child abuse.

Under the proposed registration system, caregivers will be given an application form, the simplified rules, and a statement on the requirements for registration. The provider will be given a certificate of registration upon certifying that the home meets the necessary requirements. The caregiver will be required to give a copy of the requirements to parents of children under the provider's care.

Under this system, the department does not certify that the family day care home meets the requirements. It merely certifies that the provider has stated that the requirements have been met. No false assurances are given to parents. Parents will be informed that routine inspections are not made although inspections are made on a random spot basis. Instead, emphasis will be on quick response to complaints. Homes that do not meet minimum standards will no longer be registered.

The particular value of a registration system is that it allows parents to act as informed consumers. In the final analysis, parents are the ones who know what is best for their child. Parents must be allowed to play a major role in overseeing the kind of care that the child is receiving. They must be assumed to be competent to assess the effectiveness of the care being given to their children. Better information about standards of care will help parents to become more discriminating consumers. With adequate information, parents will be able to know if requirements are being met. The parent's ability to monitor the kind of care a child is receiving will be expanded.

Day Care Systems

One of the recommendations issued by the National Day Care Home Study was to promote the development of day care systems. Day care systems are a recent development in which homes operate under the administrative auspices of a sponsoring agency. Although they are a small percentage of all family day care homes, they are considered to be important beyond their numbers as they provide care for most state and federally subsidized children in family day care. Systems perform many administrative tasks such as determining eligibility for subsidy, fees to be paid, reimbursements for the child care food program of the U.S. Department of Agriculture, as well as screening and training providers.

Systems provide many advantages. They help to recruit providers, they make sure that providers meet minimum standards, they are able to provide back-up support for providers when they become ill or when they go on vacation, and they provide support by taking care of taxes and other kinds of administrative requirements.

There are no family day care systems in Hawaii. A program for a satellite system of family day care homes was proposed by Hawaii Child Centers in 1983 but was unable to get off the ground because the Department of Labor and Industrial Relations notified Hawaii Child Centers that the satellite home providers had to be considered employees instead of independent contractors.

A satellite system would not be economically feasible if providers had to be employed directly by the sponsoring agency. The sponsor would have to pay minimum wages, contribute to unemployment insurance and workers' compensation, and pay social security taxes. The sponsoring agency might also have to pay overtime when providers work more than eight hours a day or 40 hours a week. Consequently, Hawaii Child Centers dropped the proposal.

Recently, the Department of Labor and Industrial Relations said that there is room for interpretation in determining whether a master and servant relationship prevails in a satellite system and whether family day care home providers had to be considered employees. It is hoped this can be done to permit the development of these new services for child care. Alternatively, a statutory amendment could be made to exclude family day care homes from the Hawaii Employment Security Law.

Recommendations

We recommend that:

1. Chapter 346, Hawaii Revised Statutes, be amended to provide for the voluntary registration of family day care homes when a provider certifies that minimum standards are met. Under the registration system, registered providers must inform parents of the standards for registration.

2. New rules be adopted to set minimum standards for registered family day care homes. These new rules must be simple, clear, and readily understandable to the child care community.

3. The growth of family day care systems and networks be encouraged through more liberal interpretations of existing state law or an amendment to the Hawaii Employment Security Law.

Chapter 7

SUMMARY

The Legislature's request in 1984 for a review of the child care regulatory program was timely. Reported incidents of sexual abuse here and on the mainland made the public aware that children are being exposed to hitherto unforeseen dangers and harm. The increasing number of working parents coupled with a baby boom focused national attention on issues of availability and quality of child care. It was reported that there are millions of "latchkey" children in the United States who are without care or supervision for large parts of the day. On Oahu, for the first time, parents were the prime movers behind a conference on child care that was held in 1984. At the conference, many parents voiced their frustration and anger at a child care system that they saw as costly, scarce, limited, and inconvenient.

Against this backdrop is the State's child care regulatory program that has been administered by the Department of Social Services and Housing since 1955. The purposes of this program are to ensure the health, safety, and welfare of children in child care facilities, and to promote the availability of such care. In 1982, the department adopted new rules to carry out this program. With three years of experience under the new rules, now is the appropriate time to assess the extent to which the child care regulatory program is accomplishing the intended objectives.

Our study finds the program to be inefficient and largely ineffective. It is clear that improvements are needed. Despite its years of responsibility for the program, the department appears not to understand the basic principles of a regulatory program and how it should be administered. It has neglected its overall responsibility for the development of rules, the proper management of a regulatory program, and for making sure that the program is actually accomplishing the intended purposes.

The department has been largely unresponsive to parental concerns over the cost and availability of child care, and it has not designed the rules to encourage the development of new child care programs. On the contrary, for no valid reason, the rules prohibit center care for infants and toddlers up to two years of age. Hawaii is the only state in the nation to have such a prohibition. The rules discourage drop-in care, night care, and services other than routine child care. Although the department recognizes that at least 90 percent of all family day care homes are underground, unlicensed providers, no efforts have been made to develop an alternative that would bring these providers into an open, regulated environment. The department decries the number of after school programs that are exempt from regulation. Yet, it has not attempted to determine why programs choose to be unregulated, and it has not amended its rules to accommodate these programs while ensuring an adequate level of protection for children in these programs.

The department has not assumed leadership and responsibility for the development of rules. There appears to be little understanding of legal and operational requirements of rulemaking. There is a gap between those who develop the rules and those who have to live with and work with the rules. The development of rules is done in a vacuum, without benefit of empirical research on child care or practical experience in the field. The department has not sought input into the rule development process from licensing workers, providers, or parents. There is little appreciation for the ability of parents to be discriminating consumers and to make proper decisions about care for their children.

As a result, the rules are replete with requirements that are counterproductive, that impose unnecessary paperwork, and that increase the cost of care. For example, the rules require providers to prepare numerous written policies on such areas as health, insurance, and emergency plans. Yet, there are no standards on what the policies should contain to be acceptable. Stringent qualification requirements are placed on child care staff including formal degrees, experience, and training or education in early childhood education. Yet, there is no evidence that these requirements bear a valid relationship to safeguarding children from harm.

The department has disregarded its management responsibilities for the program. It has no policies, procedures, or manuals to guide the work of licensing workers. It even lacks such basic tools as standardized application and inspection forms. Licensing workers are given no meaningful training on interpretation and enforcement of the rules. Enforcement varies from worker to worker. Each licensing worker interprets and enforces such rules as the worker sees as reasonable. Consequently, there is no statewide licensing program that is administered and enforced in a consistent and uniform manner. Parents have no assurance that licensed child care facilities comply with a standard, minimum level of protection.

Finally, the department has neglected to examine the actual impact of its regulatory program and its effectiveness. It has demonstrated little interest in exploring what is needed to make the program more efficient or to improve its effectiveness. Thus, it is unaware of the management needs of its own licensing staff, the lack of validity of some of its rules, and the counterproductive impact of many of the rules in terms of costs and availability of child care.

In view of the department's poor managaement of the child care regulatory program, some who read this report might question the organizational placement of the program within the Department of Social Services and Housing. It is possible for the program to be assigned to the Department of Labor and Industrial Relations with its responsibilities for ensuring safe and healthful working environments. Another alternative is to place the program within the Department of Commerce and Consumer Affairs as another of the occupational licensing programs that it regulates. Such an examination of the organizational placement of the child care regulatory program was outside the scope of this study. However, this may be an issue that the Legislature might wish to pursue.

For now, the Department of Social Services and Housing must make the following needed improvements. The department must take immediate responsibility for overall management of the regulatory program. It must recognize that it has to do the work on the needed rule revisions and it must have a systematic plan and program for rule development. It must understand that each rule should have a valid basis in empirical research or in practice and that each rule must be enforceable. It should seek input from a wide variety of sources in this effort, particularly from that segment of the community that the department has largely ignored: parents, providers, and licensing workers.

The department must also take immediate steps to develop policies, procedures, manuals, and forms for the regulatory program so that it can be implemented more consistently and efficiently. It should provide proper training and support for its licensing workers. In implementing the program, the department should seek to disseminate information about the rules to as wide an audience as possible. It should make sure that providers are given adequate information about the program and how they are to comply. Parents should also be informed of the rules so that they have an adequate understanding of the program and what it is supposed to accomplish. Parents can then assist in monitoring the services given by child care providers.

Finally, the department should monitor the implementation of the program. By so doing, the department will keep abreast of revisions that are needed in the rules and of the adequacy of its own operations. New rules are needed urgently for infant-toddler care. Rules to protect children from sexual abuse are another prime concern. An effective solution is needed for family day care and for before and after school programs. Work on these have been neglected for too long.

The department has asked for additional staff to carry out its responsibilities for the child care regulatory program. While more staff would be helpful, the department must first recognize that an effective child care regulatory program will only be possible when it begins to apply itself to carrying out its own responsibilities for administering the program. It is time for the department to do so.